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IMPLEMENTATION OF THE INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

Large trawler fishing illegally inshore with false trawl doors on board.

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Austin Jones, Director of the Surveillance Operations Coordinating Unit, Banjul, the Gambia.

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IMPLEMENTATION OF THE INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 2002

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PREPARATION OF THIS DOCUMENT

The FAO Committee on Fisheries, at its 24th Session, adopted the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). On 23 June 2001, at its 120th Session, the FAO Council endorsed the IPOA-IUU.

The FAO Fisheries Department has prepared and finalized these guidelines to assist FAO Members, regional fisheries management organizations and other interested parties in the implementation of the IPOA-IUU. These guidelines are based on the work of Mr David Balton, a consultant to the FAO Fishery Policy and Planning Division.

These guidelines have no formal legal status. They are intended to be practical and flexible, and may be revised in the future in light of new information and experience.

Distribution:

All FAO Members and Associate Members
Interested Nations and International Organizations
FAO Fisheries Department
FAO Fisheries Officers in FAO Regional Offices
Interested Non-Governmental Organizations

FAO Fisheries Department.
Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
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ABSTRACT

These Guidelines have been produced to support implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). These Guidelines are addressed to decision-makers and policy-makers associated with the management of fisheries, but they should be of interest to fishing industries and other parties.

The international community has experienced a growing incidence of fishing activity that does not respect applicable laws and regulations, including the standards set forth in recent international instruments. Examples of such activity include reflagging of fishing vessels to evade controls, fishing in areas of national jurisdiction without authorization by the coastal State, failure to report (or misreporting) catches, etc. Such irresponsible fishing activity directly undermines efforts to manage marine fisheries properly and impedes progress toward the goal of sustainable fisheries.

The term "illegal, unreported and unregulated fishing" – or IUU fishing – has emerged to describe a wide range of such activity. The FAO Committee on Fisheries decided in 1999 to address this growing problem through the elaboration of an International Plan of Action. Over the course of the next two years, a significant effort unfolded, which culminated in the adoption of the IPOA-IUU in 2001.

The IPOA-IUU is conceived of as a "toolbox" – a set of tools for use in dealing with IUU fishing in its various manifestations. Obviously, not all tools in the toolbox are appropriate for use in all situations. These Guidelines are intended (1) to help familiarize FAO Members and others with the tools; (2) to suggest which tools to use in particular circumstances; and (3) to provide guidance on how to use the tools effectively.

The IPOA-IUU is voluntary. However, like the Code of Conduct, certain parts of the IPOA-IUU are based on relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea and other pertinent instruments. The IPOA-IUU also contains provisions that may be, or have already been, given binding effect by means of other legal instruments, including global, regional and subregional instruments.

In short, these Guidelines review the measures to prevent, deter and eliminate IUU fishing that are contained in the IPOA-IUU and provide advice as to how those measures may be best put into effect. The guidelines also provide advice on the possible organization and content of national plans of action for implementation of the IPOA-IUU, as well as suggestions for reporting to FAO on implementation of the IPOA-IUU.

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BACKGROUND

1. From ancient times, fishing has been a major source of food for humanity and a provider of employment and economic benefits to those engaged in this activity. However, with increased knowledge and the dynamic development of fisheries, it was realized that living aquatic resources, although renewable, are not infinite and need to be properly managed, if their contribution to the nutritional, economic and social well being of the growing world's population was to be sustained.

2. The adoption in 1982 of the United Nations Convention on the Law of the Sea provided a new framework for the better management of marine resources. The new legal regime of the oceans gave coastal States rights and responsibilities for the management and use of fishery resources within the area of their national jurisdiction (EEZs), which embrace some 90 percent of the world's marine fisheries.

3. In recent years, world fisheries have become a dynamically developing sector of the food industry, and many States have striven to take advantage of their new opportunities by investing in modern fishing fleets and processing factories in response to growing international demand for fish and fishery products. It became clear, however, that many fisheries resources could not sustain an often uncontrolled increase of exploitation.

4. Clear signs of over-exploitation of important fish stocks, modifications of ecosystems, significant economic losses, and international conflicts on management and fish trade threatened the long-term sustainability of fisheries and the contribution of fisheries to food supply. Therefore, the Nineteenth Session of the FAO Committee on Fisheries (COFI), held in March 1991, recommended that new approaches to fisheries management embracing conservation and environmental, as well as social and economic, considerations were urgently needed. FAO was asked to develop the concept of responsible fisheries and elaborate a Code of Conduct to foster its application.

5. Subsequently, the Government of Mexico, in collaboration with FAO, organized an International Conference on Responsible Fishing in Cancún in May 1992. The Declaration of Cancún endorsed at that Conference was brought to the attention of the UNCED Summit in Rio de Janeiro, Brazil, in June 1992, which supported the preparation of a Code of Conduct for Responsible Fisheries. The FAO Technical Consultation on High Seas Fishing, held in September 1992, further recommended the elaboration of a Code to address the issues regarding high seas fisheries.

6. The One Hundred and Second Session of the FAO Council, held in November 1992, discussed the elaboration of the Code, recommending that priority be given to high seas issues and requested that proposals for the Code be presented to the 1993 session of the Committee on Fisheries.

7. The Twentieth Session of COFI, held in March 1993, examined in general the proposed framework and content for such a Code, including the elaboration of guidelines, and endorsed a time frame for the further elaboration of the Code. It also requested FAO to prepare, on a "fast track" basis, as part of the Code, proposals to prevent reflagging of fishing vessels which affect conservation and management measures on the high seas. This resulted in the FAO Conference, at its Twenty-seventh Session in November 1993, adopting the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, which, according to FAO Conference Resolution 15/93, forms an integral part of the Code.

8. The Code was formulated so as to be interpreted and applied in conformity with the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea, 1982, as well as with the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, and in the light of, *inter alia*, the 1992 Declaration of Cancún and the 1992 Rio Declaration on Environment and Development, in particular Chapter 17 of Agenda 21.

9. The development of the Code was carried out by FAO in consultation and collaboration with relevant United Nations Agencies and other international organizations, including non-governmental organizations.

10. The Code of Conduct consists of five introductory articles: Nature and Scope; Objectives; Relationship with Other International Instruments; Implementation, Monitoring and Updating and Special Requirements of Developing Countries. These introductory articles are followed by an article on General Principles, which precedes the six thematic articles on Fisheries Management, Fishing Operations, Aquaculture Development, Integration of Fisheries into Coastal Area Management, Post-Harvest Practices and Trade, and Fisheries Research. As already mentioned, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas forms an integral part of the Code.

11. The Code is voluntary. However, certain parts of it are based on relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst the Parties, such as the Agreement to Promote Compliance with Conservation and Management Measures by Fishing Vessels on the High Seas, 1993.

12. The Twenty-eighth Session of the Conference in Resolution 4/95 adopted the Code of Conduct for Responsible Fisheries on 31 October 1995. The same Resolution requested FAO *inter alia* to elaborate as appropriate technical guidelines in support of the implementation of the Code in collaboration with members and interested relevant organizations.

13. Despite these achievements, the international community has experienced a growing incidence of fishing activity that does not respect applicable laws and regulations, including the standards set forth in these international instruments. Examples of such activity include reflagging of fishing vessels to evade controls, fishing in areas of national jurisdiction without authorization by the coastal State, failure to report (or misreporting) catches, etc. Such irresponsible fishing activity directly undermines efforts to manage marine fisheries properly and impedes progress toward the goal of sustainable fisheries.

14. The term "illegal, unreported and unregulated fishing" – or IUU fishing – has emerged to describe a wide range of such activity. As discussed more fully herein, the FAO Committee on Fisheries decided in 1999 to elaborate an International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA-IUU). Over the course of the next two years, a significant effort unfolded, which culminated in the adoption of the IPOA-IUU in 2001.

15. The IPOA-IUU is conceived of as a "toolbox" – a set of tools for use in dealing with IUU fishing in its various manifestations. Obviously, not all tools in the toolbox are appropriate for use in all situations. These guidelines are intended primarily (1) to help familiarize FAO Members and others with the tools; (2) to suggest which tools to use in particular circumstances; and (3) to provide guidance on how to use the tools effectively.

16. As a "toolbox," the IPOA-IUU attempts to embrace all existing measures that have been shown to be useful in combating IUU fishing, including new and emerging tools that at least some States are currently bound to apply. The IPOA recognizes that different States have different legal obligations at present. At the same time, the design of the IPOA is flexible to allow the dynamic development of international law and relevant obligations.

ACRONYMS

1982 UN Convention	United Nations Convention on the Law of the Sea of 10 December 1982
1993 FAO Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
1995 UN Fish Stocks Agreement	Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
Code of Conduct	FAO Code of Conduct for Responsible Fisheries
COFI	FAO Committee on Fisheries
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FFA	South Pacific Forum Fisheries Agency
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
IBSFC	The International Baltic Sea Fishery Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International plan of action
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IUU Fishing	Illegal, unreported and unregulated fishing
MCS	Monitoring, control and surveillance
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
NPAFC	North Pacific Anadromous Fish Commission
NPOA	National plan of action
NGO	Non-governmental organization
RFMO	Regional fisheries management organization
VMS	Vessel monitoring system
WTO	World Trade Organization

1. INTERNATIONAL PLAN OF ACTION – IUU

1.1 Origin and Purpose of the IPOA-IUU

Illegal, unreported and unregulated (IUU) fishing occurs in virtually all capture fisheries, whether they are conducted within areas under national jurisdiction or on the high seas. IUU fishing poses a direct and significant threat to effective conservation and management of many fish stocks, causing multiple adverse consequences for fisheries and for the people who depend on them in the pursuit of their legitimate livelihoods.

By frustrating fishery management objectives, IUU fishing can lead to the collapse of a fishery or seriously impair efforts to rebuild depleted fish stocks. This, in turn, may result in lost economic and social opportunities, both short-term and long-term, and may diminish food security. Left unchecked, IUU fishing can completely negate the benefits of effective fisheries management.

Those who conduct IUU fishing are also unlikely to observe rules designed to protect the marine environment from the harmful effects of some fishing activity, including, for example, restrictions on the harvest of juvenile fish, gear restrictions established to minimize waste and bycatch of non-target species, and prohibitions on fishing in known spawning areas. To avoid detection, IUU fishers often violate certain basic safety requirements, such as keeping navigation lights lit at night, which puts other users of the oceans at risk. Operators of IUU vessels also tend to deny to crew members fundamental rights concerning the terms and conditions of their labour, including those concerning wages, safety standards and other living and working conditions.

In addition to its detrimental economic, social, environmental and safety consequences, the *unfairness* of IUU fishing raises serious concerns. By definition, IUU fishing is either an expressly illegal activity or, at a minimum, an activity undertaken with little regard for applicable standards. IUU fishers gain an unjust advantage over legitimate fishers; *i.e.* those who operate in accordance with those standards. In this sense, IUU fishers are "free riders" who benefit unfairly from the sacrifices made by others for the sake of proper fisheries conservation and management. This situation undermines the morale of legitimate fishers and, perhaps more importantly, encourages them to disregard the rules as well. Thus, IUU fishing tends to promote additional IUU fishing, creating a downward cycle of management failure.[1]

The unreported nature of IUU fishing makes it particularly difficult to quantify. Available information nevertheless indicates that, for some important

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[1] For further discussion, see "Dealing with the 'Bad Actors' of Ocean Fisheries, " by David Balton.

fisheries, IUU fishing accounts for up to 30 percent of total catches and in at least one case possibly much more.[2] For example, the Indian Ocean Tuna Commission (IOTC) recently indicated that at least 70,000 tons of tuna catches by large longline vessels go unreported each year in the Indian Ocean.[3] The International Commission for the Conservation of Atlantic Tunas (ICCAT) estimated in 1999 that unreported catches represent about 10 percent of overall catches of the major Atlantic tuna species (bluefin, swordfish and bigeye) and that misreporting of catches by some ICCAT members is also suspected.[4] The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) indicated in 1999 its extreme concern about the high level of IUU fishing for toothfish (*Dissostichus* spp.) in its Convention Area,[5] a concern that has been echoed by the International Tribunal for the Law of the Sea.

Moreover, available information strongly suggests that, despite apparent improvement in some regional situations, the amount of IUU fishing world-wide is increasing, as IUU fishers seek to avoid compliance with stricter fishing regulations that are being imposed to deal with downturns in a growing number of fish stocks. While some estimates suggest that IUU fishing may account for as much as one quarter of total catch in the world's oceans, fully reliable data on IUU fishing are unfortunately scarce.

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[2] See SOFIA 2000, p. 57.

[3] Report of the Second Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements, p. 7. See also IOTC Resolution 00/01, indicating that "70 percent of data from longline operations [in that region] are still not reported to IOTC."

[4] However, due presumably to a number of measures adopted by ICCAT in recent years to combat IUU fishing, which are described in later sections of these guidelines, ICCAT estimates of IUU fishing levels for at least bluefin tuna and bigeye tuna have decreased in 1999/2000, compared to previous years.

[5] CCAMLR estimates for 1999/2000 show a decrease in IUU fishing for toothfish from previous years, but it remains quite high, at more than 8,000 tons of landings (green weight). The high market value of toothfish has made this species a prime target for IUU fishing. CCAMLR members see this issue as the greatest challenge currently facing the Commission. The continuation of IUU fishing could reduce toothfish stocks to levels from which they cannot recover. Also, the incidental mortality of seabirds caused by those involved in IUU fishing is threatening to drive to extinction a number of species, specifically petrels and albatrosses. For further information, see "The Illegal and Unregulated Fishery for Toothfish in the Southern Ocean, and the CCAMLR Catch Documentation Scheme," by D.J. Agnew.

Since the late 1990s, a number of international fora have issued calls to combat IUU fishing.[6] The FAO Committee on Fisheries (COFI), at its Twenty-third Session in 1999, considered the problem to be a matter of high priority. Information presented to COFI at that time indicated that IUU fishing, particularly by fishing vessels flying "flags of convenience," was a growing threat to the achievement of sustainable fisheries. In the face of such information, COFI recommended the elaboration of an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).[7]

Shortly afterwards, an FAO Ministerial Meeting on Fisheries in March 1999 expressed concern over the growing incidence of IUU fishing and declared that, without prejudice to the rights and obligations of States under international law, FAO "will develop a global plan of action to deal effectively with all forms of illegal, unregulated and unreported fishing, including fishing by vessels flying 'flags of convenience,' through coordinated efforts by States, FAO, relevant regional fisheries management bodies and other relevant international agencies such as the International Maritime Organization (IMO)."

In June 1999, the FAO Council echoed these calls for a comprehensive initiative to tackle the problem of IUU fishing and determined that this initiative should be carried forward through the development of an international plan of action within the framework of the Code of Conduct.

The Government of Australia, in cooperation with FAO, organized an Expert Consultation on Illegal, Unreported and Unregulated Fishing, which took place in Sydney, Australia, from 15 to 19 May 2000.[8] FAO subsequently convened a Technical Consultation on Illegal, Unreported and Unregulated Fishing in Rome from 2 to 6 October 2000. During a further Technical Consultation, held in Rome from 22 to 23 February 2001, careful deliberations produced a complete text for the draft IPOA for consideration by COFI at its Twenty-fourth Session.

COFI adopted the IPOA-IUU, by consensus, on 2 March 2001. In doing so, COFI urged all FAO Members to take the necessary steps to implement the

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[6] *E.g.* the Commission on Sustainable Development (April 1999); the Asia-Pacific Economic Cooperation Fisheries Working Group (July 1999); the United Nations General Assembly (November 1999); the IMO Sub-Committee on Flag State Implementation (January 2000); the IMO Marine Environment Protection Committee (March 2000); the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (May 2000).

[7] Report of the Twenty-third Session of the Committee on Fisheries, Rome, Italy, 15-19 February 1999, Paragraph 72.

[8] Documents relating to this Expert Consultation are available in the Report of the Expert Consultation on Illegal, Unreported and Unregulated Fishing.

IPOA-IUU effectively. The FAO Council, at its 120th Session in June 2001, endorsed the IPOA-IUU. On 28 November 2001, the United Nations General Assembly urged all States, as a matter of priority, to coordinate their activities and cooperate directly and, as appropriate, through relevant regional fisheries management organizations, in the implementation of the IPOA-IUU and to develop corresponding national plans of action (NPOAs).[9]

1.2 Elements of the IPOA-IUU

Addressing the complex problem of IUU fishing in an effective manner is not an easy task. The term "IUU fishing," as discussed below, covers a broad range of activity. The vessels that conduct IUU fishing are, by nature, highly mobile platforms that often operate in marine areas far from land and in places where effective monitoring, control and surveillance (MCS) are lacking.[10] The beneficial owners of the vessels, who typically have nationalities that differ from those of their vessels, often succeed in preventing fisheries managers and law enforcement officials from ascertaining their identities. In addition, the ease with which IUU fishers can change the registration of their vessels and the number of ports in which they can off-load their catch make tracking difficult.

In light of these manifold challenges, the IPOA-IUU was conceived as a kind of comprehensive "toolbox" that includes a full range of tools to prevent, deter and eliminate IUU fishing. Many of these tools are already in use by at least some States, acting alone or in cooperation with other States, including through regional fisheries management organizations (RFMOs). Not all tools work in all situations. However, States should be able to find in the IPOA-IUU an appropriate tool or combination of tools to fit every circumstance and, in so doing, reduce the incidence of IUU fishing.

The following section briefly summarizes the major elements of the IPOA-IUU.

Basic terminology. Section II of the IPOA-IUU highlights a number of key terms as they are used in the text. Of particular note are the terms "illegal," "unreported," and "unregulated" as they relate to fishing activity. They are presented here verbatim:

Illegal fishing refers to fishing activities:

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[9] See UNGA Resolution 56/13, paragraph 15.

[10] The term "monitoring, control and surveillance" – or MCS – appears to have come into common usage following the 1981 FAO Expert Consultation on Monitoring, Control and Surveillance Systems for Fisheries Management.

(1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

(2) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

(3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

Unreported fishing refers to fishing activities:

(1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

(2) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

Unregulated fishing refers to fishing activities:

(1) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

(2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.[11]

As these provisions reveal, "IUU fishing" is a broad term that captures a wide variety of fishing activity, most of which is illicit. Illegal fishing is, by definition, wrongful. Any fishing activity that should be reported but is not (or is misreported) is also wrongful. Although unregulated fishing may or may not be

[11] The IPOA-IUU notes that "certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under" the IPOA-IUU.

wrongful, depending on the circumstances, the IPOA-IUU is generally concerned with unregulated fishing that is likely to frustrate the achievement of sustainable fisheries.[12]

The common thread is that IUU fishing may generally be said to occur in violation of – or at least with disregard for – applicable fisheries rules, whether adopted at the national or international level.

Relationship to the Code of Conduct and to other instruments. Like the other IPOAs adopted by COFI in recent years, the IPOA-IUU has been elaborated within the framework of the Code of Conduct. A number of provisions of the Code of Conduct, particularly certain provisions of Articles 1 and 3, also describe the relationship between the IPOA-IUU and other relevant international instruments. Generally speaking, the IPOA-IUU is to be interpreted and applied in a manner that is consistent with those instruments, including the 1982 UN Convention, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. The provisions of the IPOA-IUU that relate to international trade are also to be interpreted and applied in a manner that is consistent with the rules of the World Trade Organization (WTO).

Objectives and principles. As its title indicates, the objective of the IPOA is to prevent, deter and eliminate IUU fishing. The principles to guide the pursuit of this objective include: (1) broad participation and coordination among States, as well as representatives from industry, fishing communities and non-governmental organizations (NGOs); (2) the phasing in of action to implement the IPOA-IUU on the earliest possible timetable; (3) the use of a comprehensive and integrated approach, so as to address all impacts of IUU fishing; (4) the maintenance of consistency with the conservation and long-term sustainable use of fish stocks and the protection of the environment; (5) transparency; and (6) non-discrimination in form or in fact against any State or its fishing vessels.

Overlapping responsibilities of States. As detailed below, the IPOA-IUU contains a large and diverse set of measures for States to take to combat IUU fishing, individually and in collaboration with other States. Some of these measures are designed for use by all States; others are tailored for application by

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[12] One could say that fishers are always to blame for engaging in "illegal" and "unreported" fishing activity. The wrongful acts are entirely within their control. Similarly, fishers who become "unregulated" by evading rules that apply to other fishers, *e.g.* by reflagging or by using vessels without nationality, are to blame for wrongdoing. However, fishers who conduct activity that is unregulated solely because the relevant State or States have not adopted any regulatory measures for the fishery concerned cannot be said to be engaged in wrongful acts.

flag States, coastal States and Port States.[13] Another section of the IPOA-IUU, on "Internationally Agreed Market-Related Measures," may be said to be addressed to "market States" – those States involved in the international trade of fish and fish products. Obviously, there may well be some overlap in these measures as they are implemented.

The IPOA-IUU also calls upon all States to develop and adopt, as soon as possible but not later than 3 years after the adoption of the IPOA-IUU (*i.e.* by March 2004 at the latest), NPOA(s) to further achieve the objectives of the IPOA-IUU and to give full effect to its provisions as an integral part of their fisheries management programs and budgets. A primary purpose of these guidelines is to provide suggestions to national governments on the development of such NPOAs. Given this timetable, it is urgent that all States begin the process of developing NPOAs as soon as possible.

Regional Fisheries Management Organizations. The IPOA-IUU recognizes that many fisheries, particularly for straddling fish stocks and highly migratory fish stocks, are managed under the auspices of RFMOs and that, accordingly, RFMOs have a primary role to play in combating IUU fishing. To this end, the IPOA-IUU provides States, acting through RFMOs, with a number of tools designed for use at the regional level, building on measures that several RFMOs have already developed and implemented. The IPOA-IUU, while recognizing that States are only directly bound by measures adopted by RFMOs of which they are members, also reaffirms that States that are not members of RFMOs have a responsibility to ensure that their nationals and vessels do not undermine fishery conservation and management measures adopted by RFMOs.

Special Requirements of Developing Countries. Developing States, particularly small island developing States and other developing coastal States, are among those that suffer the most from the adverse effects of IUU fishing. The IPOA-IUU calls upon States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, to support training and capacity building and to consider providing financial, technical and other assistance to developing States so that they can more fully meet their commitments under the IPOA-IUU and obligations under international law, including their duties as flag States, coastal States and port States. Such assistance should be directed in particular to help such States in the development and implementation of NPOAs.

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[13] The term "coastal State" is generally understood to mean a State bordering a marine area. The term "flag State" is generally understood to mean a State in whose territory a vessel is registered and whose flag a vessel is entitled to fly. The term "port State" is generally understood to mean a State in whose port a vessel is seeking or has obtained access.

Role of FAO. The IPOA-IUU calls upon FAO to carry out a number of tasks to promote its implementation by States, acting individually and in cooperation with other States. Among other things, FAO will, as and to the extent directed by its Conference, collect information relating to IUU fishing, support development and implementation of NPOAs and convene an expert consultation to consider ways to standardize certification and documentation requirements relating to fisheries.[14] FAO will also receive and publish reports from States and RFMOs on their implementation of the IPOA-IUU, which should be presented as part of their biennial reporting to FAO on the Code of Conduct.

2. PURPOSE AND SCOPE OF GUIDELINES

These guidelines have been produced to support implementation of IPOA-IUU by national governments as well as by relevant international organizations, particularly at the regional and subregional level. These guidelines may also be of use to NGOs, including representatives of the fishing sector, environmental organizations, and academic and scientific institutions.

These guidelines review the measures to prevent, deter and eliminate IUU fishing that are contained in the IPOA-IUU and provide advice as to how those measures may be best put into effect. These guidelines also provide advice on the possible organization and content of NPOAs for implementation of the IPOA-IUU, as well as suggestions for reporting to FAO on implementation of the IPOA-IUU. Section 11 of these guidelines contains a handy checklist of recommended actions, drawn from earlier sections.

These guidelines are not intended to be a substitute for the IPOA-IUU itself, or as a manual for interpretation or application of other relevant instruments in the field of international fisheries. These guidelines have no formal legal status.

3. ALL STATE RESPONSIBILITIES

3.1 Observance of International Standards

IUU fishing contravenes existing international standards for fishery conservation and management. In other words, if all States were fully implementing those international standards, there would be much less IUU fishing.

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[14] That Expert Consultation took place in January 2002. See Report of the Expert Consultation of the Regional Fisheries Management Bodies on the Harmonization of Catch Certifcation.

In light of this, the very first "tool" in the IPOA-IUU is a call upon all States to "give full effect to relevant norms of international law" in order to prevent, deter and eliminate IUU fishing. Those States that have not yet done so should become party to the 1982 UN Convention, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. All States should also fully and effectively implement the Code of Conduct and its related IPOAs.

In addition, States whose vessels participate in fisheries regulated by RFMOs should either become members of those RFMOs or, at a minimum, apply the conservation and management measures adopted by those RFMOs to their own vessels or adopt measures consistent with those conservation and management measures. States should also cooperate to establish new RFMOs as needed for coordinated conservation and management of fish stocks. Section 8 of these guidelines discusses these commitments in greater detail.

3.1.1 Areas under National Jurisdiction

Within areas under national jurisdiction, IUU fishing undermines international standards concerning the rights and responsibilities of coastal States with respect to living marine resources. The 1982 UN Convention recognizes the sovereign rights of coastal States to explore, exploit, conserve and manage those resources in areas under their jurisdiction. With those rights come responsibilities, as set forth in the 1982 UN Convention and elaborated in subsequent instruments, to adopt and implement appropriate measures to conserve and manage those resources.

IUU fishing in areas under national jurisdiction prevents coastal States from achieving compliance with conservation and management measures that apply in those areas. To the extent that IUU fishing is undertaken by vessels registered in the coastal State, it represents a failure of the coastal State to fulfil its responsibilities to properly conserve and manage fisheries in areas under its jurisdiction. To the extent that IUU fishing is carried out by vessels registered in States other than the coastal State, IUU fishing also represents a violation of the responsibilities of flag States to ensure that their vessels do not fish in ways that transgress fishery rules properly established by coastal States.[15]

For these reasons, the IPOA-IUU calls upon each coastal State to implement measures to prevent, deter and eliminate IUU fishing that occurs within waters under its jurisdiction. Section 5 of these guidelines describes these

[15] To underscore the seriousness of this problem, the United Nations General Assembly adopted resolution 49/116 of 19 December 1994, in which it called upon States to take measures to ensure that no fishing vessels entitled to fly their flag fished in waters under the national jurisdiction of other States, unless duly authorized by the competent authorities of the coastal State or coastal States concerned, and that such fishing operations be conducted in accordance with the conditions set out in the authorization.

provisions of the IPOA-IUU in more detail and offers suggestions for practical steps that coastal States should take to address problems of IUU fishing.

Many developing coastal States unfortunately lack the capacity and resources to detect IUU fishing within areas under their jurisdiction, to apprehend those conducting such fishing and to impose penalties on them. For this reason, the IPOA-IUU calls upon all States to assist developing coastal States in building the capacity necessary to prevent IUU fishing from taking place in areas under their jurisdiction. Section 9 of these guidelines discusses these provisions of the IPOA-IUU in more detail.

3.1.2 High Seas

IUU fishing on the high seas also contravenes international standards. While the 1982 UN Convention recognizes the right of all States for their nationals to fish on the high seas, it makes this right subject to a number of significant qualifications, including the obligations to conserve the living marine resources of the high seas and to cooperate with other States. Subsequent instruments, including the Code of Conduct, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, elaborate upon these basic standards, particularly with respect to the responsibilities of flag States. Among the flag State responsibilities reflected in these instruments are three basic rules that, if fully implemented, would significantly reduce IUU fishing on high seas:

- Flag States should ensure that their vessels do not undermine fishery conservation and management measures that apply in any high seas area in which their vessels operate.
- Vessels should not fish on the high seas except pursuant to express authorization to do so by the flag State.
- A flag State should not grant such authorization to a vessel unless it can ensure that the vessel will not undermine fishery conservation and management measures that apply in a high seas area in which the vessel will operate.

Many international instruments acknowledge the primary responsibility of flag States for the fishing activities of their vessels on the high seas. However, a number of flag States make virtually no effort to fulfil that responsibility. Some States permit the registration of fishing vessels in their territories that have no genuine link to their State.[16] In many cases, the true or beneficial owners of the vessels have other nationalities, the master and crew have still other nationalities,

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[16] As provided in the 1982 UN Convention, article 91.1, "Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship."

the vessels rarely if ever visit the territory of the flag State, and the fish harvested by the vessels are not sold in (or even transshipped through) the flag State. Even more importantly, the flag State has neither the ability nor the apparent will to monitor the fishing activities of the vessels or to impose penalties on them for IUU fishing. Indeed, the vessels register in such flag States precisely to avoid such control.

In sum, IUU fishing on the high seas constitutes, first and foremost, a failure on the part of flag States to abide by responsibilities recognized by the international community and reflected in relevant international instruments. The IPOA-IUU contains a number of tools, discussed in Section 4 of these guidelines, to help willing flag States fulfil these responsibilities. Those flag States that are unwilling to use these tools could also help prevent, deter and eliminate IUU fishing by removing from their registries those fishing vessels whose activities they cannot control. Indeed, some States have begun to delete fishing vessels from their registers in response to requests from other States and RFMOs to end IUU fishing that their vessels had been conducting.

3.2 National Laws, Regulations and Practices

3.2.1 Review of Pertinent Laws, Regulations and Practices

At an early stage in the implementation of the IPOA-IUU, each State should undertake a thorough review of its national laws, regulations and practices relating to IUU fishing.[17] Such a review could be done in connection with the development or revision of fishery management plans, as are called for in the Code of Conduct. The principal goal of the review should be to rationalize and strengthen the legal regime and to make possible the use of all relevant tools in the IPOA-IUU "toolbox". The review should consider such questions as:

- For all States, is any additional legislative or regulatory authority necessary or desirable to implement the IPOA?
- Are existing penalties for IUU fishing of sufficient severity to prevent, deter and eliminate such fishing by vessels flying your flag and/or operating in areas under your jurisdiction?
- For all States, does your domestic law give effect to obligations you have assumed under international law, including through your participation in RFMOs?
- For flag States, are the laws, regulations and practices relating to fishing by vessels flying your flag on the high seas and in areas

[17] Such a review would not necessarily entail the enactment of legislative changes. But even in cases where legislative changes are necessary, States should attempt to implement as many aspects of the IPOA-IUU as possible even prior to the culmination of legislative action, which can often involve lengthy delays.

under the jurisdiction of other States sufficient to prevent, deter and eliminate IUU fishing by those vessels? Do your laws, regulations and practices provide an adequate basis for monitoring such fishing activity on the high seas, for apprehending IUU fishers and for imposing penalties on them?

- For coastal States, are the laws, regulations and practices relating to fishing by vessels in areas under your jurisdiction sufficient to prevent, deter and eliminate IUU fishing by those vessels? If you allow foreign vessels to fish in areas under your jurisdiction, do the agreements providing for such access need to be strengthened to address problems of IUU fishing?
- For port States, are your laws, regulations and practices relating to the landings or transshipment of fish in your ports sufficient to ensure that such fish are not the product of IUU fishing?
- For States involved in international trade in fish and fishery products, are your laws, regulations and practices sufficient to implement internationally agreed market-related measures designed to prevent, deter and eliminate IUU fishing?[18]

3.2.2 State Control over Nationals

One reason why IUU fishing has been such a persistent problem is that many States have not been successful in controlling the fishing activities by their nationals. Admittedly, it may be difficult for many States to control, or even to be aware of, activities of their nationals that take place in the territory of other States or aboard vessels registered in other States. States may also have difficulty in preventing their nationals from reflagging fishing vessels in other States with the intent to engage in IUU fishing.

The IPOA-IUU nevertheless calls on all States to take measures or cooperate to ensure that their nationals do not support or engage in IUU fishing. In particular, all States should cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.

Under international law, a State is free to enact laws prohibiting its nationals from engaging in IUU fishing, even if the activity in question takes place aboard a foreign vessel or in waters under the jurisdiction of another State.[19] Some States have already done so.

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[18] For suggestions on the enactment of a wide range of legislation relating to IUU fishing, see "Legislating for Sustainable Fisheries: A Guide to Implementing the 1993 FAO Compliance Agreement and 1995 UN Fish Stocks Agreement," by William Edeson, David Freestone, and Elly Gudmundsdottir.

[19] For further discussion, see "Tools to Address IUU Fishing: The Current Legal Situation," by William Edeson.

For example, Japan requires its nationals to obtain the permission of the Japanese Government before working aboard non-Japanese fishing vessels operating in the Atlantic bluefin tuna and southern bluefin tuna fishing areas. The goal of this measure is to prevent Japanese nationals from becoming involved in IUU fishing aboard foreign vessels. Japan also intends to deny permission to any Japanese national to work aboard a foreign fishing vessel in any other fishery, if the vessel's flag State is not a member of the RFMO regulating that fishery.[20] New Zealand and Australia have also enacted legislation restricting the activities of their respective nationals aboard foreign vessels registered in States meeting certain criteria.

In the United States of America, the Lacey Act makes it unlawful for any person subject to U.S. jurisdiction to "import, export, transport, sell, receive, acquire, possess or purchase any fish ... taken, possessed or sold in violation of any ... foreign ... law, treaty or regulation." Hence, a U.S. national may be prosecuted for engaging in certain forms of IUU fishing aboard foreign vessels.[21]

To fulfil the commitments contained in the IPOA-IUU relating to control of nationals, all States should consider adopting measures along these lines and should consider taking the following steps as well:

- Each State should make it a violation of its law for its nationals to engage in fishing activities that violate the fishery conservation and management laws of any other State or that undermine the effectiveness of conservation and management measures adopted by a RFMO.[22]

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[20] See "The Importance of Taking Cooperative Action Against Specific Fishing Vessels that are Diminishing Effectiveness of Tuna Conservation and Management Measures," by Masayuki Komatsu.

[21] See United States Code, Title 16, Chapter 53. For further discussion of how the Lacey Act might be adapted for other situations involving IUU fishing, see "National Legislative Options to Combat IUU Fishing," by Blaise Kuemlangan.

[22] Such a law could be drafted as follows:

A person subject to the jurisdiction of [State] who –

(a) on his or her own account, or as partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or

(b) causes or permits a person acting on his behalf, or uses a fishing vessel, to land, import, export, transport, sell, receive, acquire or purchase,

any fish taken, possessed, transported or sold contrary to the law of another State or in a manner that undermines the effectiveness of conservation and management measures adopted by a Regional Fisheries Management Organization shall be guilty of an offence and shall be liable to pay a fine not exceeding (insert monetary value).

- Sanctions against nationals that have engaged in IUU fishing could include, for example, monetary fines, confiscation of fishing vessels and fishing gear and denial of future fishing licences.[23]
- Each flag State should take measures to deter its nationals from reflagging fishing vessels, or from initially registering new vessels, in States that are identified by a RFMO as undermining the effectiveness of its conservation and management measures.[24] Such measures may include controls on deletion of vessels from national registers, controls on the export of fishing vessels,[25] publicity campaigns to make vessel owners aware of those States that have been so identified, and a prohibition on allowing vessels that are or have been registered in such States ever to be re-registered in the initial flag State.
- As detailed in paragraphs 73 and 74 of the IPOA-IUU, each State should ensure that its nationals (as well as other individuals under their jurisdiction) are aware of the detrimental effects of IUU fishing and should find ways to discourage such individuals from doing business with those engaged in IUU fishing.

3.2.3 Vessels without Nationality

Although reliable data is unavailable on the proportion of IUU fishing conducted by vessels without nationality, anecdotal evidence indicates that such vessels are responsible for a significant amount of it. In some cases, the vessels in question are *actually* without nationality, in that they are not are not properly registered in, and hence not entitled to fly the flag of, any State. In other cases, the vessels in question may be *deemed to be* without nationality (*i.e.* may be assimilated to vessels without nationality) because they sail under the flags of two or more States, using them according to convenience.[26]

The IPOA-IUU calls upon all States to take measures consistent with international law in relation to vessels without nationality that are involved in

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[23] Spanish legislation, for example, provides for the suspension of a captain's licence for up to five years for committing certain offenses aboard flag of convenience vessels.

[24] Cf., article IV(3) of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean ("Each Party shall take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring their registration for the purpose of avoiding compliance with the provisions of this Convention").

[25] Japan, for example, has since 1999 denied all requests to export large-scale tuna longline vessels. In addition, Japan has worked through industry channels to develop understandings that certain former Japanese vessels owned in Taiwan Province of China should be scrapped and that others constructed in Taiwan Province of China should either be registered and regulated there or scrapped.

[26] See 1982 UN Convention, articles 91 and 92.

IUU fishing on the high seas.[27] Taking action against such vessels should be a high priority, because their very statelessness frustrates the primary means to control fishing activity on the high seas – through flag State jurisdiction. A vessel without nationality operates outside of this form of control.

At least some States take the view that a vessel without nationality on the high seas is subject to the jurisdiction of *any* State.[28] Under this view, any State may impose penalties on a vessel without nationality for engaging in IUU fishing on the high seas. The Canadian Coastal Fisheries Protection Act, for example, makes it an offence for vessels without nationality to fish in areas designated as managed by a RFMO. Canadian fisheries protection officers may exercise any power conferred upon them by that Act (*e.g.* boarding, inspection, seizure, arrest) against vessels without nationality found in such areas. Legal proceedings would follow, as appropriate, on the exercise of those powers.[29] In 2001, Norway amended its legislation to adopt a comparable approach.[30] Similarly, the United States of America has taken law enforcement action (seizure, prosecution, imposition of fines) against vessels without nationality that were engaged in fishing for salmon on the high seas of the North Pacific Ocean.

Fishing by vessels without nationality also threatens the integrity of measures adopted by RFMOs. Some RFMOs have responded to these threats by calling on their members to take action against vessels without nationality. ICCAT, for example, adopted a binding measure that became effective in 1998 that provides in pertinent part:

> Any sightings of vessels that appear to be without nationality (stateless) that may be fishing for ICCAT species shall be reported immediately by the appropriate authorities of the Contracting Party whose vessel or aircraft made the sighting. Where there are reasonable grounds for suspecting that a fishing vessel targeting ICCAT species on the high seas is stateless, a Contracting Party may board and inspect the vessel. Where evidence so warrants, the Contracting Party may take such action as may be appropriate in

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[27] The IPOA-IUU does not explicitly refer to IUU fishing in areas under national jurisdiction by vessels without nationality. In any event, the coastal State in question would have jurisdiction to penalize such fishing.

[28] Oppenheim states that, in the interest of order on the open sea, a vessel not sailing under the flag of a State enjoys no protection whatsoever. Only vessels having the nationality of a State – *i.e.* vessels properly registered in a State and entitled to fly the flag of that State – enjoy the freedoms of the high seas. See Lauterpacht, H. (ed.), Oppenheim's International Law, 7th ed., Vol. I, §261, p. 546.

[29] The Coastal Fisheries Protection Act may be found at: http://laws.justice.gc.ca/en/C-33/index.html

[30] On 21 June 2001, Norway amended its Sea Fisheries Act to enable Norwegian authorities to prosecute stateless vessels for high seas fishing violations.

accordance with international law. Any Contracting Party receiving a report of a sighting or conducting an action against a stateless fishing vessel shall immediately notify the ICCAT Secretariat, which, in turn, shall notify all other Contracting Parties. In addition, Contracting Parties are encouraged to establish points of contact to facilitate cooperation and other appropriate actions.[31]

All States can also help to prevent IUU fishing on the high seas by vessels without nationality by exchanging information about the activities of such vessels, including sightings information or information derived from landings or trade data.

3.2.4 Eliminating Subsidies and other Economic Support

Some States provide subsidies and other forms of economic support for fishing activities. Where such support is or may be used for IUU fishing, States should terminate the assistance promptly.

It should be noted in this respect that the IPOA on the Management of Fishing Capacity also contains commitments relating to subsidies and other economic incentives. Specifically, that IPOA calls on all States to reduce and progressively eliminate all factors, including subsidies and economic incentives, which contribute to the build-up of excess fishing capacity, thereby undermining the sustainability of marine living resources. While the implementation of this commitment will require considerable work at the international and national levels, some of which is already underway,[32] States should move immediately to

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[31] Recommendation 97-11 on Transshipments & Vessel Sightings. Similarly, the Scheme to Promote Compliance by non-Contracting Party Vessels with Recommendations established by NEAFC provides that, "where there are reasonable grounds for suspecting that a vessel, which has been sighted engaging in fishing activities in the Regulatory Area, is without nationality, a NEAFC Contracting Party may also board and inspect the vessel. Where evidence so warrants, a NEAFC Contracting Party may take such action as may be appropriate in accordance with international law. Contracting Parties are encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels."

[32] Paragraph 28 of WTO Ministerial Declaration adopted in Doha, 14 November 2001, agreed to negotiations to clarify and improve WTO disciplines on fisheries subsidies. Paragraph 32 of that Declaration also encouraged the WTO Committee on Trade and Environment to give particular attention in its future work to those situations (including situations involving subsidies to the fisheries sector) in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development. Recent decisions of other international organizations, including FAO and OECD, to continue to work on the issue of fisheries subsidies will buttress these efforts within the WTO.

end all forms of government economic support for IUU fishing. There can be no justification for States to continue to assist those who carry out IUU fishing.

3.2.5 Monitoring, Control and Surveillance

IUU fishers must evade detection in order to succeed. As noted above, the operators of IUU vessels often conduct fishing operations in areas where MCS is lacking, particularly in remote high seas regions or in waters under the jurisdiction of coastal States, particularly developing States, that do not have the ability to stop such fishing. The owners of these vessels also seek to avoid detection through deceptive business practices. For example, they create extended and complex corporate arrangements to hamper investigators, they repeatedly change the names and call signs of their vessels and they regularly reflag the vessels in States that continue to maintain open registries.

Improvement in MCS capabilities and their effective implementation in waters under national jurisdiction and on the high seas represents the best hope for preventing, deterring and eliminating IUU fishing. Fortunately, States have developed a number of MCS tools in recent years and have worked to strengthen and refine them. Cooperation among States, including through RFMOs and other more informal networks, has also recently broadened. For example, States should consider participating in the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities, described in Box 1.

There are other recent examples of cooperation among States to improve MCS capabilities. One is the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, which allows parties to share their assets in fisheries surveillance and law enforcement activities, including boarding, inspection and seizure of vessels.[33] Norway has also entered into agreements with several other States providing for exchange of information on inspections at sea, exchange of information on port control, exchange of personnel and training.[34]

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[33] For a detailed discussion of this treaty, see "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries," by Tranform Aqorau.

[34] See "Measures to be Adopted by the Port State in Combating IUU Fishing," by Terje Lobach.

Box 1

INTERNATIONAL NETWORK FOR THE COOPERATION AND COORDINATION OF FISHERIES-RELATED MONITORING, CONTROL AND SURVEILLANCE ACTIVITIES

The International MCS Network is an arrangement of national organizations/institutions in charge of fisheries-related MCS activities, which have been authorized by their States to coordinate and cooperate in order to prevent IUU fishing.

The objectives of the International MCS Network are to improve the efficiency and effectiveness of fisheries-related MCS, activities through enhanced cooperation, coordination, information collection and exchange. The Technical Terms of Reference of the International MCS Network can be found in Appendix II to these guidelines.

The International MCS Network arose out of a meeting in Santiago, Chile, in January 2000. Membership in the International MCS Network is voluntary.

To learn more about the International MCS Network, go to its website:

http://swr.ucsd.edu/enf/mcs/mcs.htm
User name: mcs
Password: mcsnet

Paragraph 24 and other relevant provisions of the IPOA-IUU describe a wide variety of MCS tools for use against IUU fishing, including (but not limited to) vessel monitoring systems (VMS), observer programs, catch documentation schemes, inspections of vessels in port and at sea, denial of port access and/or privileges to suspected IUU vessels, maintenance of "black" and "white" lists,[35] and the creation of presumptions against the legitimacy of catches by non-party fishing vessels in areas regulated by RFMOs.

VMS is a tool that can greatly increase the efficiency and effectiveness of MCS. In recent years, a growing number of States, including quite a few

[35] "Black" lists in this context are generally understood to mean lists of vessels that have been determined to have been used for IUU fishing. "White" lists are generally understood to mean lists of vessels that are authorized to fish in a given area by the relevant national (or regional) authorities.

developing States,[36] have introduced VMS requirements for their fishing vessels or as a condition of access for foreign vessels to fish in waters under their jurisdiction. A number of international agreements also require VMS. It is estimated that, at present, at least 8,000 fishing vessels are reporting their positions by VMS. By using VMS, vessels can transmit basic data quickly and inexpensively. All States should strongly consider introducing or expanding requirements for their vessels to use VMS. To assist in this effort, FAO has published and disseminated technical guidelines on the subject.[37]

In many cases, the key to effective MCS lies in the ability of fisheries managers and enforcement officials to exchange information on possible IUU fishing activity as quickly as possible. To speed and broaden the exchange of such information, States should work to standardize the formats and modes in which the information is transmitted.

It must be emphasized that MCS measures do not relate exclusively to taking enforcement action against IUU fishing that is already underway, but also encompass prevention and deterrence. A critical part of any strategy to combat IUU fishing lies in securing understanding and support among fishers for the applicable conservation and management measures that have been adopted. States can foster voluntary compliance with such measures and reduce IUU fishing through:

- community education and other outreach to fishers
- ensuring that stakeholders participate in the development of fishery rules
- engendering peer pressure in favour of compliance
- instituting accurate and verifiable data collection regimes.

Those fishers who persist in breaking the rules should face the likelihood of sufficient penalties. To make that a reality, all States should invest in building the capacity to inspect, investigate and to prosecute violators successfully. All States should also ensure that its judicial or administrative system for handling cases of IUU fishing operate promptly and efficiently.

One important challenge is to use MCS to prevent, deter and eliminate IUU fishing while not unduly burdening legitimate fishing operations. For example, States should conduct inspections in ways that minimize the inconvenience to vessel operators and protect the confidentiality of private and

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[36] Developing States that are either using or are actively considering the use of VMS for fisheries vessels include Malaysia, Maldives, Morocco, Mozambique, Namibia, Seychelles and the member States of the FFA.

[37] FAO. 1998. FAO Technical Guidelines for Responsible Fisheries. Fishing Operations: Vessel Monitoring Systems.

proprietary data. By doing so, fisheries managers and enforcement officials are more likely to receive the cooperation of law-abiding fishers, who have good reason to help combat IUU fishing.

The specific MCS tools contained in the IPOA-IUU are discussed more thoroughly below in the sections dealing with flag States, port States, coastal States and RFMOs.

3.3 Cooperation between States

Cooperation among States is absolutely necessary if IUU fishing is to be prevented, for several reasons:

- Vessels engaged in IUU fishing often move in and out of areas under the jurisdiction of multiple States, and operate on the high seas as well. In such cases, the States involved must cooperate in MCS efforts.
- As noted above, the owners and operators of IUU fishing vessels typically have nationalities that differ from those of the vessels themselves. Again, cooperation among the States involved is necessary to determine the identities of those who control the IUU fishing operations and to impose penalties on them.
- A large percentage of fish harvested through IUU fishing are put into international trade, making cooperation between exporting and importing States necessary to deny market access to these products.

Paragraphs 28-31 of the IPOA-IUU set forth a number of ways in which States should cooperate to prevent, deter and eliminate IUU fishing, including through their participation in RFMOs. Of primary importance is the sharing of relevant information and the provision of assistance to developing States. In order to facilitate cooperation, the IPOA-IUU calls on each State to appoint an initial "point of contact" and to make this appointment known to all. Possible ways to publicize the appointment of such points of contact would be to post the relevant names on the websites of national fishery administrations and to include them in reports to FAO on implementation of the IPOA-IUU.

4. FLAG STATE RESPONSIBILITIES

The flag State has responsibility under international law for controlling the fishing activities of a vessel, no matter where the vessel operates:

- If the vessel is fishing in waters under the jurisdiction of the flag State, the responsibility of the flag State is exclusive. Generally speaking, no other State has the right or responsibility to control the fishing activities of the vessel.

- If the vessel is fishing on the high seas, the flag State has traditionally had exclusive responsibility for controlling the fishing activities of the vessel. However, a number of recent international agreements have given States other than the flag State certain rights to take action with respect to fishing vessels on the high seas, primarily to help prevent, deter and eliminate IUU fishing.[38]
- If the vessel is fishing in waters under the jurisdiction of a State other than the flag State (or is in the port of a State other than the flag State), the coastal (or port) State has rights and responsibilities with respect to the fishing activities of the vessel. In such situations, however, the flag State also continues to have responsibilities with respect to those fishing activities, including the responsibility to ensure that the vessel does not conduct unauthorized fishing in waters under the jurisdiction of another State.

In light of the above, flag States may generally be said to have the primary responsibility for preventing, deterring and eliminating IUU fishing. The extent of IUU fishing in the world today indicates that flag States are not fulfilling this responsibility adequately. Indeed, lack of effective flag State control has been cited as the primary cause of IUU fishing.[39]

All flag States can achieve greater control over their fishing vessels. As discussed below, the IPOA-IUU offers an extensive assortment of tools for flag States to do that.

To achieve greater control, however, a State must have the political will to do so. In this regard, unfortunately, a number of flag States appear to have lacked the political will up until this time. These States allow fishing vessels to be registered in their territories and to fly their flags without taking any of the basic steps necessary to control the fishing activities of those vessels.

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[38] See, e.g. the 1995 UN Fish Stocks Agreement, articles 21-22; the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, article V; the 1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, article XI; the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, article 26 (not yet in force). The Contracting Parties of NAFO have also adopted a Scheme of Joint International Inspection and Control that entails non-flag-State boarding and inspection of fishing vessels on the high seas. The IPOA-IUU recognizes these arrangements and calls for their effective implementation.

[39] See "A Global Review of Illegal, Unreported and Unregulated (IUU) Fishing," collated and edited by Kevin Bray.

The IPOA-IUU and the previous international instruments on which it builds reflect the intention of the international community to persuade such flag States to develop the political will necessary to control the fishing activities of their vessels. The adverse economic, social and environmental consequences of IUU fishing have become too great to allow the status quo to continue. Those flag States that, to date, have been unwilling or unable to control their fishing vessels must make special efforts to implement the IPOA-IUU or, at a minimum, to remove the fishing vessels from their registries.[40]

As noted above, a first step for flag States is to ratify and/or implement the relevant international instruments that embody the modern norms relating to flag State responsibility, including the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement and the Code of Conduct.

To assist flag States in the implementation of these norms, the IPOA-IUU sets forth a series of tools under three sub-headings: (1) Fishing Vessel Registration; (2) Record of Fishing Vessels; and (3) Authorization to Fish. The following sections discuss each in turn.

4.1 Fishing Vessel Registration

In most situations, the act of registration is the means by which a State grants its nationality to a vessel. Once registered, a vessel usually becomes entitled to fly the flag of that State. In other words, the State in whose territory the vessel is registered becomes the flag State and assumes primary responsibility for the vessel vis-à-vis other States.

The IPOA-IUU provides that a flag State should ensure, *before it registers a fishing vessel*, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.

Although a State cannot necessarily predict that a vessel will engage in IUU fishing, the chance that it might do so is probably greater if the vessel has done so before. For this reason, the IPOA-IUU strongly discourages States from

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[40] Some positive developments can be reported in this regard. Panama, for example, recently reduced the number of fishing vessels on its register from more than 1,500 to approximately 100 and has subjected the remaining vessels to monitoring and data reporting requirements. Panama also joined ICCAT in 2000. ICCAT responded by lifting prohibitions on the importation of bluefin tuna and swordfish from Panama that it had adopted in the mid-to-late 1990s. Honduras, which has also been the subject of ICCAT trade restrictions, joined that RFMO in 2001 and offered evidence that it was taking measures to reduce IUU fishing by vessels flying its flag. In 1996, Belize amended Section 25 of its Registration of Merchant Ships Act to authorize revocation of a vessel's registration for certain serious offenses, which could include fisheries offenses.

registering a vessel that has a history of IUU fishing.[41] Experience has shown that the same vessels are often involved in IUU fishing, despite changes in name and registration.

As noted above, owners of IUU vessels sometimes evade controls by frequently changing flag States, a practice known as "flag hopping." A State should require a vessel owner seeking to register a fishing vessel to specify all previous States in which the vessel has been registered, including under any other names. Should a pattern of possible flag hopping emerge, a presumption should arise that the vessel may have been used for IUU fishing. The State should, at a minimum, require the vessel owner to explain any frequent changes in registration.

As the IPOA-IUU notes, the functions of registering a vessel and providing it with an authorization to fish are separate. In many States, these functions are the responsibility of different governmental agencies that sometimes do not communicate well with each other. For example, transportation ministries are often responsible for registering vessels, while fisheries (or agriculture) ministries issue authorizations to fish.

Many flag States could strengthen their control over fishing vessels by ensuring that there is a strong link between the process by which they register fishing vessels and the process by which they grant authorizations to fish.[42] States should work to coordinate these functions and to facilitate communications among the agencies involved. Fisheries (or agriculture) ministries, which may be more likely to have information concerning the past fishing activity of a vessel seeking to be registered, should find ways to communicate such information quickly to the ministries in charge of registration. Moreover, as the IPOA-IUU suggests, States should consider registering only those vessels that it is prepared to authorize to fish either in its waters or on the high seas.

Many States do not require registration of small fishing vessels at all. However, in light of the growth of IUU fishing, including by small vessels, States are encouraged to register as many fishing vessels as possible, preferably all of them, and to enter all of them on its record of fishing vessels, discussed

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[41] In this regard, the IPOA-IUU recognizes that exceptions may be made, for example, in cases where ownership and control of the vessel has truly changed. Similarly, article III of the 1993 FAO Compliance Agreement prohibits parties from issuing an authorization to fish to a vessel with a history of illegal fishing, while also allowing for limited exceptions of the same sort. However, some States and RFMOs have taken steps to deny registration or other benefits to vessels that have engaged in IUU fishing, despite any change in ownership or control.

[42] See Report of the Joint FAO/IMO *Ad hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters, Rome 9-11 October 2000.

below. Given that the requirement of registration is a fundamental tool by which a flag State can control its fishing vessels, the administrative cost of expanding a State's registry to include all vessels should be more than offset by the savings realized by reducing the IUU fishing that unregistered vessels may now be committing.[43]

4.1.1 Chartering Arrangements

Some IUU fishers seek to evade controls by abusing the arrangements for the chartering of fishing vessels. The IPOA-IUU calls on all States involved in a chartering arrangement to take steps, within the limits of their respective jurisdiction, to ensure that chartered vessels do not engage in IUU fishing.

If chartering arrangements are not carefully designed and enforced, the identity of those individuals or corporations that have the ultimate interest in the vessel may not be apparent. For example, a vessel may be owned by someone from State A, be registered in State B and be chartered to fish in waters under the jurisdiction of State C. The relationships between the owner, the charterer and flag State are often unclear to the coastal State.

To address this problem, States should require all chartering arrangements to be fully transparent. For example, the Regional Register of Foreign Fishing Vessels administered by the South Pacific Forum Fisheries Agency (FFA)[44] requires foreign fishing vessels to submit an application to the Director for Registration. The applicant vessels must include the name(s) of any charterer in addition to other required information (names of applicants, radio call sign, State of registration, and flag State registration number, previous vessel name(s), name(s) of the vessel owner, operator, vessel master captain and fishing master).[45]

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[43] The international standards for the registration of ships have been codified in the UN Convention on the Conditions for the Registration of Ships (1986). Although this Convention is not yet in force and exempts fishing vessels, it clearly describes the procedures to be followed in order to avoid any misuse or fraudulent practice associated with registration. For instance, it describes the procedures to be followed in bare-boat chartering when the vessel is subject to dual registry.

[44] The FFA was established by South Pacific Forum Fisheries Agency Convention, 10 July 1978. The 16 members of the FFA are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It should be noted that the Regional Register of Foreign Fishing Vessels maintained by the FFA does not serve the same function as a national register of ships.

[45] See T. Aqorau, supra note 33.

RFMOs have a role to play in ensuring that chartering arrangements for stocks under their purview are transparent. For example, NAFO has recently adopted rules to regulate chartering arrangements for quotas and shrimp fishing days.[46] Those rules impose relatively tight controls on chartering arrangements and require full transparency. In the context of developing new allocation criteria, ICCAT members have also made a commitment to create rules to regulate chartering operations for stocks under its purview.

Another problem may arise when a vessel registered in State A is chartered by nationals in State B to fish in waters under the jurisdiction of State B as well as on the high seas. Responsibility for controlling the high seas fishing activity may not be clear – does it rest with State A (the flag State) or with State B? While the vessel operates in waters under the jurisdiction of State B, that State would have responsibility as a coastal State over the vessel's fishing activities. But when the vessel ventures onto the high seas, the flag State (State A) might generally be thought to have responsibility over the fishing activities. State B may have no authority to board or inspect the vessel on the high seas or have other practical means to control its high seas fishing activities. Yet State A may have no way to know when the vessel is fishing on the high seas.

One possible solution to the above situation is to require that chartered vessels take on the nationality of State B – that is, have State B become the flag State – for the duration of the charter arrangement. This would give State B responsibility for the fishing activities of the vessel in both areas where it has been chartered to fish – in waters under the jurisdiction of State B as well as on the high seas. Another approach would be for State B not to allow chartered vessels to fish on the high seas at all.

A third possibility is to make both State A and B responsible for controlling the high seas fishing conducted pursuant to a charter arrangement. The charter arrangement could, for example, provide express authority for State B (as well as State A) to board and inspect the vessel on the high seas and require reporting of catch data to both States. Along these lines, the NAFO chartering rules provide that:

- The Contracting Party whose vessel will harvest a quota or use shrimp fishing days under the charter arrangement "is responsible for ensuring that the vessel complies with the requirements of the NAFO Conservation and Enforcement Measures. This does not nullify the obligations of the Contacting Party to which the quota and shrimp fishing days have been allocated [originally].

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[46] See NAFO/FC Doc. 01/1 - Conservation and Enforcement Measures - Supplement of FC Doc. 00/1, Part I.B.

- The Contracting Party whose vessel will harvest a quota or use shrimp fishing days under the charter arrangement must report the resulting catches and incidental catches both to the Contracting Party involved and to the NAFO Executive Secretary. The report of such catches must be separated from other catch reporting.

A final possibility is to provide for boarding and inspection of chartered vessels on the high seas through regional arrangements of the sort provided for in articles 21 and 22 of the 1995 UN Fish Stocks Agreement.[47]

In any case, just as States should generally not permit vessels with a history of IUU fishing to register in their territories, States and RFMOs should generally not allow chartering arrangements to be made for such vessels.

4.2 Record of Fishing Vessels

There is no single and complete database or record of fishing vessels in the world, a situation that undoubtedly creates opportunities for IUU vessels to escape detection.

While a comprehensive database may not be possible to develop immediately, the IPOA-IUU calls on each flag State to maintain a record of fishing vessels entitled to fly its flag. For fishing vessels authorized to fish on the high seas, the record should include the information listed in article VI, paragraphs 1 and 2 of the 1993 FAO Compliance Agreement. Paragraph 42 of the IPOA-IUU suggests additional information to be included in the record. The IPOA-IUU further suggests that all flag States maintain a record that includes *all such information* with respect to *each of its registered vessels* (those authorized to fish on the high seas as well as others). In addition, the Coordinating Working Party on Fishery Statistics has recommended that records of fishing vessels should indicate whether vessels are actively fishing.[48] Please refer to Box 2 for a compilation of all these elements.

As envisioned in the 1993 FAO Compliance Agreement, FAO has already established a database for compilation of information on high seas fishing vessels. Some flag States have begun to submit the relevant data on their vessels to FAO, even prior to entry into force of that Agreement. To help prevent, deter and eliminate IUU fishing, particularly on the high seas, all flag States should submit this data to FAO and update their submissions regularly.

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[47] Chartering arrangements may also give rise to problems concerning the attribution of catch. For a discussion of the approach to such problems adopted by the Coordinating Working Party on Fishery Statistics, see "Legal Aspects of Collection of Fisheries Data."

[48] Report of the Nineteenth Session of the Coordinating Working Party on Fisheries Statistics, paragraph 150.

FAO, in turn, will make available the compiled data, subject to any restrictions imposed by a State with respect to the data it has submitted. In some situations, there may be advantages to the creation of records of fishing vessels on a regional basis. For a discussion of the Regional Register maintained by the FFA, see Section 5 of these guidelines (Coastal State measures).

4.3 Authorization to Fish

The next basic means by which a flag State can control its fishing vessels is to prohibit them from undertaking fishing activities except pursuant to express authorization issued by the flag State. By authorizing a vessel to fish, a flag State is in effect expressing its intent to exercise control over the fishing activities of the vessel. *A flag State should issue such an authorization only to a vessel properly registered in its territory and entered in its record of fishing vessels.*

Box 2

RELEYANT DATA FOR INCLUSION IN RECORD OF FISHING VESSELS

Article VI.1 of the 1993 FAO Compliance Agreement calls for submission to FAO of the following data with respect to vessels authorized to fish on the high seas:

- name of fishing vessel, registration number, previous names (if known), and port of registry;
- previous flag (if any);
- International Radio Call Sign (if any);
- name and address of owner or owners;
- where and when built;
- type of vessel;
- length.

Article VI.2 of the 1993 FAO Compliance calls for submission to FAO of the following data with respect to vessels authorized to fish on the high seas, to the extent practicable:

- name and address of operator (manager) or operators (managers) (if any);
- type of fishing method or methods;
- moulded depth;
- beam;
- gross register tonnage;
- power of main engine or engines.

Box 2 (Cont'd)

Paragraph 42 of the IPOA-IUU calls on flag States to include all the above data for every vessel in its record of fishing vessels, as well as following additional data:

- the previous names, if any and if known;
- name, address and nationality of the natural or legal person in whose name the vessel is registered;
- name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;
- name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;
- name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and
- vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.

The Coordinating Working Party on Fisheries Statistics recommends that, where possible, States should indicate whether each vessel listed in the record is actively fishing.

International standards already require flag States to prohibit their vessels from fishing on the high seas without express authorization to do so.[49] The IPOA-IUU reaffirms that responsibility and calls upon flag States to require their vessels to obtain express authorization before fishing in *any* marine area. The authorization to fish, which vessels should carry on board, should include at least the information specified in paragraph 46 of the IPOA-IUU.

Authorizations to fish must be conditional; *i.e.* vessels should receive authorizations to fish only if the owners/operators agree to fish in accordance with specified conditions designed to allow the flag State to maintain control over the fishing activities. These conditions should set forth, for example, what

[49] See, *e.g.* the 1993 FAO Compliance Agreement, article III.2; the 1995 UN Fish Stocks Agreement, article 18.3; Code of Conduct, article 8.2.2.

species can be caught, what gear can be used, where the vessels may operate and at what time of the year. Paragraph 47 of the IPOA-IUU suggests a broad range of such conditions, not all of which will be applicable in all situations.

Before a coastal State permits a vessel registered in another State to fish in waters under its jurisdiction, it should verify that the vessel has received from its flag State a specific authorization to fish in waters beyond the jurisdiction of the flag State. Ideally, a coastal State should not permit such a vessel to fish in waters under its jurisdiction unless it is requested to do so by the flag State, or the flag State at least indicates that it does not object to the proposed fishing.

In any event, the permission granted to such a vessel by a coastal State serves in effect as a second authorization to fish, which should contain conditions designed to allow the coastal State to control the fishing activities of the vessel undertaken in waters under its jurisdiction. Just as a flag State should not issue authorizations to fish to vessels it cannot control, a coastal State should not permit foreign vessels it cannot control to fish in waters under its jurisdiction.

4.4 Transport and Support Vessels

In many cases, harvesting vessels need the assistance of transport and other support vessels in carrying out IUU fishing. Indeed, a common means of conducting IUU fishing involves the unreported (or misreported) transshipment of fish at sea, where monitoring of the transshipment is extremely difficult. When the harvesting vessels later come to port, the fish remaining on board often represent a small fraction of what they actually took from the sea. Meanwhile, the true origin of the fish they transshipped at sea to transport vessels goes undiscovered.

The IPOA-IUU calls upon flag States to ensure that their transport or other vessels do not support IUU fishing. In particular, where vessels have been identified as having engaged in IUU fishing, flag States should ensure that other vessels registered in their territories do not transship fish from that vessel, re-supply that vessel or assist it in other ways (except for humanitarian purposes, including the safety of crew members).

Flag States should also closely control the transshipment process. To the greatest extent possible, flag States should prohibit their vessels from engaging in transshipment of fish at sea without prior authorization issued by the flag State. An even more effective approach would be to prohibit transshipment of fish at sea entirely, as some States have already done. For example, the Harmonised Minimum Terms and Conditions for Foreign Fishing Vessel Access, established by the FFA, permit transshipments only in designated ports and not

at sea whatsoever.[50] At a minimum, flag States should require all their vessels engaged in transshipment of fish at sea to report the information set forth in paragraph 49 of the IPOA-IUU.

4.5 Other Control Measures

By creating a system for comprehensive registration of fishing vessels, by maintaining a comprehensive record of those vessels, by prohibiting vessels from fishing without express authorizations to fish, by carefully considering whether to grant such authorizations to fish, and by not registering fishing vessels that it is not prepared to authorize to fish, a flag State will have established the formal (or legal) basis for exercising its responsibilities with respect to the fishing activities of its vessels.

To achieve *actual* control over those vessels, a flag State should choose from a variety of practical tools described in the IPOA-IUU.

For example, a flag State should have some means to know where its vessels are located, if not at each moment, then at least at regular and frequent intervals. Typical tools for tracking vessels include mandatory position reporting by radio and mandatory maintenance of logbooks with frequent recording of vessel position. Indeed, acceptance of these requirements by vessel operators should be necessary before issuing an authorization to fish.

Unfortunately, while legitimate vessel operators may reliably comply with these requirements, IUU fishers often do not. A flag State should therefore develop some independent means of verifying the location of their vessels at sea. As discussed above, VMS is one means of doing this. The costs of creating and maintaining VMS regimes has fallen significantly in recent years, even while the technology has dramatically improved. For some fisheries, particularly those that take place in remote regions, VMS may be the only reliable method of tracking vessels at sea.

Another tool is the placement of independent observers on board vessels, who can monitor vessel positions as well as observe fishing operations. The costs of training observers and of providing for their salary and sustenance can be high. The placement of observers aboard small vessels may also be impractical. Despite these obstacles, the number and scope of observer programs has grown substantially in recent years.

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[50] For further background information and the operational aspects of the minimum terms and conditions, see T. Aqorau, Illegal Fishing and Fisheries Law Enforcement in Small Island Developing States: The Pacific Islands Experience, The International Journal of Marine and Coastal Law, Vol. 12, No. 1, 45-46.

Flag States are also encouraged to develop the capacity to conduct regular patrols at sea in areas where their vessels are known to fish. For many developing States, this will require financial and technical assistance. There are, nevertheless, ways to reduce the cost of at-sea patrols, particularly by pooling resources in cooperation with other States. Participation in the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities, discussed above, can facilitate joint action in this respect.

Flag States, including those that do not currently have the capacity to board and inspect their own vessels on the high seas may also authorize other States to carry out those boardings and inspections on their behalf. Authorization may be given on an *ad hoc* basis, for example in response to a particular request from another State to board a vessel on the high seas that is suspected of engaging in IUU fishing. Flag States may also authorize other States to board and inspect their vessels on the high seas by participating in regional arrangements that have been designed for this purpose and by becoming party to the 1995 UN Fish Stocks Agreement.[51]

As set forth in paragraph 47.8 of the IPOA-IUU, flag States should also require, as a condition of issuing an authorization to fish, that each vessel is properly marked in accordance with internationally recognized standards, such as the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels. Fishing gear should also be marked in ways that permit easy identification and tracing.

A flag State must also have some means of determining what each of its fishing vessels is catching, both for short-term management of the fishery and for longer term assessment of the affected stocks. Accordingly, flag States must require their vessels to report on their fishing activities at regular intervals in order to receive an authorization to fish. VMS, radio and fax methods all provide convenient and time-sensitive means for such reporting. Mandatory reporting of catch data through logbooks is also common. Other methods are also available.[52]

Although the data to be reported will vary from fishery to fishery, flag States should require their fishing vessels at a minimum to report timely, complete and accurate information concerning fisheries activities at the time of harvest including:

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[51] See note 38, supra.

[52] For a discussion of the advantages of reporting systems based on VMS technology, see Andrew Smith, Vessel Monitoring Systems, FAO March 2000 (Paper presented at Annual Conference of the Center for Ocean Law and Policy, University of Virginia and Food and Agriculture Organization, Current Fisheries Issues and the Food and Agriculture Organization of the United Nations, FAO Rome 16-17 March 2000).

- vessel identification (radio call sign, port and number of registry)
- vessel position
- vessel course
- fishing effort (fishing location, date and time of place fished)
- catch composition (target and non target species by nominal weight (live weight equivalent of landings)
- zone entry/exit (including closed areas entry/exit) notifications
- port entry notifications [53]

Flag States should also establish a mechanism to verify the accuracy of reported data and should penalize the failure to report and the misreporting of data. Approaches include routine inspections in port and the use of independent on-board observers.

As discussed above, flag States should ensure that penalties imposed for IUU fishing are of sufficient gravity to be effective in deterring future IUU fishing and to deprive the offenders of the benefits accruing from the IUU fishing. For serious offences, such sanctions should include withdrawal or suspension of the vessel's authorization to fish. Sanctions applicable in respect of masters and other officers of fishing vessels should include withdrawal or suspension of their authorizations to serve in those capacities.

Flag States whose vessels regularly fish in waters under the jurisdiction of other States, *e.g.* pursuant to access agreements, should enter into arrangements with the coastal States to prevent, deter and eliminate IUU fishing in such circumstances. For example, a treaty between certain Pacific Island States and the United States of America requires the latter to assist the former in MCS efforts. The treaty also requires the United States to transfer to the FFA any fines it collects from its vessels for having fished in violation of the treaty.

5. COASTAL STATE MEASURES

5.1 Coastal State Rights and Responsibilities

International law provides that coastal States have sovereign rights to manage fisheries in waters under their jurisdiction. More than ninety percent of the global fish catch is estimated to be taken within waters under the jurisdiction of coastal States. Although reliable data is not available, it may be presumed that a significant proportion of IUU fishing also occurs in those waters. Much of that IUU fishing is conducted by vessels registered in the coastal States themselves, particularly in the form of underreporting or misreporting of catch. In other

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[53] Taken from B. Kuemlangan, supra note 21. For further information, see FAO, Guidelines for Routine Collection of Capture Fisheries Data, FAO Fisheries Technical Paper 382, Rome 1999.

cases, fishing vessels registered elsewhere operate without permission of the coastal State (poach) or fish in violation of the terms of access granted to them by the coastal State.[54]

IUU fishing within waters under national jurisdiction primarily harms the coastal States in question and the legitimate fishers who operate in those waters. It is therefore manifestly in the interest of coastal States to do all they can to prevent, deter and eliminate IUU fishing in those waters, as they will reap the benefits most directly.

In addition, because fish stocks (and other species in the ecosystem) often migrate through waters under the jurisdiction of more than one coastal State or between areas under national jurisdiction and the high seas, such IUU fishing harms the interests of others as well. In part because of the migratory nature of these resources, the sovereign rights of coastal States to manage fisheries in waters under their jurisdiction also imply a responsibility to manage the fisheries properly and in accordance with international standards.

The IPOA-IUU calls upon each coastal State, in the exercise of these sovereign rights, to implement measures to prevent, deter and eliminate IUU fishing.

The large majority of fishing activity taking place in waters under the jurisdiction of most coastal States is undertaken by vessels registered in the coastal States themselves. In such situations, the coastal State is also the flag State and, as such, should carry out its responsibilities as a flag State with respect to its vessels operating in waters under its jurisdiction. As discussed in Section 4 of these guidelines, each coastal State whose vessels operate in waters under its own jurisdiction should:

- require its vessels to be registered
- include all vessels (and all relevant data relating to them) in a record of fishing vessels
- require vessels to obtain express authorizations to fish, which should be issued only to vessels listed in the record
- avoid registering a vessel with a history of IUU fishing
- require appropriate reporting of catches and related data and maintenance of logbooks[55]

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[54] Some coastal States, particularly developing coastal States, seek to control the fishing activities of foreign vessels granted access to operate in their waters more strictly than those of vessels registered in their own territory. This has prompted some vessel owners to register fishing vessels in those coastal States as a way to avoid more stringent controls. See T. Aqorau, supra note 33.

Paragraph 51 of the IPOA-IUU sets forth a variety of tools for each coastal State to use to prevent, deter and eliminate all forms of IUU fishing that may occur in waters under its jurisdiction, whether carried out by its own vessels or by vessels registered elsewhere. Many of these tools are similar to measures to be taken by flag States, summarized above. For example, paragraph 51.1 calls upon coastal States to undertake "effective [MCS] of fishing activities in the [EEZ]." As discussed in Section 3.2.5 of these guidelines, establishment of effective MCS requires a broad-based effort to monitor fishing activity, investigate possible infractions and impose appropriately severe penalties. Each coastal State should strengthen its MCS capacities and, in particular, should consider requiring vessels operating in waters under its jurisdiction to use VMS.

Similarly, paragraph 51 of the IPOA-IUU calls upon coastal States to ensure that no vessel, domestic or foreign, undertakes fishing activity in waters under its jurisdiction without a valid authorization to fish issued by that coastal State. Such authorizations should be issued only to vessels that are properly entered on a record of vessels maintained by the coastal State.

As discussed above, transshipment of fish at-sea often facilitates IUU fishing. For this reason, paragraph 51 also calls upon each coastal State to ensure that both at-sea transshipment and processing of fish in waters under its jurisdiction are either expressly authorized by the coastal State or, at a minimum, are conducted in conformity with appropriate regulations adopted by the coastal State.

To assist those fishers who wish to operate legitimately, a coastal State should ensure that waters under its jurisdiction are clearly marked on charts. The charts should also identify any protected sensitive areas where fishing is prohibited and areas limited to fishing by certain categories of fishers or types of fishing gear.

5.2 Access and Access Agreements

A coastal State that does not have the capacity to harvest the total allowable catch of fish in waters under its jurisdiction has an obligation to grant access to those waters to fishers from other States.[56] Determining the terms and conditions for such access, however, gives the coastal State opportunities to limit the possibilities that foreign fishers will conduct IUU fishing in those waters. In

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[55] For basic information on catch reporting requirements, see FAO, Guidelines for Routine Collection of Capture Fisheries Data, FAO Fisheries Technical Paper 382, Rome 1999. Among other things, these guidelines suggest procedures for verifying catch reports from vessels, e.g., by comparing those reports with actual landings.

[56] See 1982 UN Convention, article 62.2.

light of this, paragraph 51 of the IPOA-IUU calls on coastal States to regulate fishing access to their waters in a manner that will help prevent, deter and eliminate IUU fishing.

The coastal State granting access is often a developing State without the capacity to patrol waters under its jurisdiction effectively. In such cases, the coastal State must rely on other tools to control possible IUU fishing.

One general approach is to make any access subject to an agreement with the flag State that clearly delineates the continuing responsibilities borne by the flag State with respect to the fishing activities conducted by its vessels that are granted access. At a minimum, the agreement should commit the flag State to penalize its vessels that have violated the terms and conditions of access.[57] The agreement might also commit the flag State, among other things, to:

- assist in MCS efforts undertaken by the coastal State
- make violation of the coastal State's fishing restrictions a violation of the laws of the flag State
- remit to the coastal State any fines the flag State may collect for fishing violations committed by its vessels in the waters of the coastal State.[58]

Access agreements of this sort can create an active partnership between the coastal State and the flag State in preventing, deterring and eliminating IUU fishing. In order for the partnership to be fully effective, however, the access agreement should only provide access for vessels that are registered in the access-seeking State. In other words, the access-seeking State must be the flag State with respect to all vessels covered by the access agreement. If, instead, the agreement allows access for vessels registered in third States – *e.g.* through charter arrangements – the access-seeking State will not have flag State responsibility with respect to those vessels.[59]

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[57] In this regard, article 8.2.7 of the Code of Conduct calls upon flag States to take enforcement measures in respect of fishing vessels entitled to fly their flag which have been found to have contravened applicable conservation and management measures, which include measures developed by a coastal State that apply in waters under its jurisdiction.

[58] These commitments are present, for example, in the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

[59] For more information on fisheries access agreements, see W. Martin, M. Lodge, J. Caddy and K. Mfodwo, "A Handbook for Negotiating Fisheries Access Agreements," (World Wildlife Fund, 2000).

Whether or not a coastal State enters into an access agreement with the flag State, the coastal State should use a number of other tools at its disposal to control possible IUU fishing conducted by vessels granted access. Those tools include:

- maintenance of a record of foreign flag fishing vessels authorized to fish in waters under its jurisdiction
- verification that the flag State has authorized a vessel to fish in waters beyond the flag State's jurisdiction before granting it access
- requiring vessels to use VMS, such that the coastal State has real-time or near real-time access to vessel positions and receives regular data reports by VMS
- requiring vessels, or a certain percentage of them, to carry independent observers

Just as flag States should generally avoid registering vessels with a history of IUU fishing, coastal States should avoid granting access to those vessels as well. Norway, for example, has established a regulation providing that an application for a licence to fish in Norwegian waters may be denied if the vessel or the vessel owner has taken part in an unregulated fishery in international waters on a fish stock subject to regulations in waters under Norwegian fisheries jurisdiction, or under the regulation of a RFMO. A vessel may be denied access to Norwegian waters even if it has new owners or operators.[60]

5.3 Cooperation among Coastal States

To maximize its ability to prevent, deter and eliminate IUU fishing in waters under its jurisdiction, a coastal State must work closely with other States on a variety of levels. The IPOA-IUU calls on coastal States in particular to cooperate and exchange information with others, including neighbouring coastal States and RFMOs.

Such cooperation could include exchanging information and data on illegal activity, developing and exchanging "black lists" of vessels and owners involved in poaching, developing regionally harmonized legislation and regulations, delegating to and sharing with neighbouring States certain enforcement rights (including the right of hot pursuit),[61] regionally coordinated use of surveillance and apprehension capabilities, and the provision of other assistance to improve MCS capabilities.

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[60] Norway also denies to such vessels the right to fly its flag or to use its port facilities. For a full discussion of Norway's measures in this regard, see T. Lobach, supra note 34.

[61] For general rules relating to the right of hot pursuit, see the 1982 UN Convention, article 111.

For example, a group of coastal States in West Africa comprising the Sub-Regional Fisheries Commission have created a Surveillance Operations Coordinating Unit to coordinate MCS activities and thereby strengthen the enforcement of national fisheries laws.[62] In addition, a recent Protocol on Fisheries concluded by the South African Development Community (SADC) includes an article on law enforcement that provides for sharing of MCS assets and information.[63]

A group of neighbouring coastal States may also find it advantageous to create joint or common rules for fisheries access as a way to combat IUU fishing. One well-known example of such action has been undertaken by the members of the FFA. Those coastal States have created an effective Regional Register as well as the Harmonised Minimum Terms and Conditions for Foreign Fishing Vessel Access.

A foreign fishing vessel included on the FFA Regional Register automatically obtains "good standing." Should it lose its good standing due to violation of conservation and management measures of one FFA member, the vessel will lose the ability to operate in waters under the jurisdiction of *any* of the other 15 FFA members. This creates a powerful incentive in favour of compliance.

The effectiveness of this approach depends on strong regional cooperation and cohesion. Regional registration of vessels can only work where there is a common fishery. A regional registration scheme must be centrally administered and coordinated. The FFA Regional Register also benefits from the desire of most fishing vessels to operate in waters under the jurisdiction of more than one FFA member.

In addition, FFA Members undertake to ensure that any access agreements they negotiate include all requirements set forth in the Harmonised Minimum Terms and Conditions for Foreign Fishing Vessel Access:

- no foreign vessel will fish in a member State's exclusive economic zone (EEZ) unless it is issued a licence in the prescribed common licence form

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[62] Luxembourg has provided funding for this initiative, through FAO. For further information on this initiative, contact the Surveillance Operations Coordinating Unit at luxdev@gamtel.gm. For further information on IUU fishing in this region, see "Pirate Fishing: Plundering West Africa," by Greenpeace.

[63] Representatives of all 14 SADC Member States signed the Protocol on Fisheries on 14 August 2001. The Protocol will enter into force 30 days after the deposit of instruments of ratification by two-thirds of the SADC Member States.

- transshipment at sea is prohibited and that transshipments can only be done in designated ports
- foreign fishing vessels give full access to the authorised officers from the licensing State to the vessels log and catch records
- vessel operators maintain and submit catch logs for operations in the EEZ and adjacent high seas areas. Such reports must be provided to the licensing State within 45 days after completion of the fishing trip
- vessel operators provide regular catch records to the licensing State while operating within EEZs
- vessel operators carry observers to verify reports and that observers are given full access to certain parts of the vessel and record for purposes of observation
- vessel operators maintain a local agent for purposes of process
- fishing gear be stowed while transiting an EEZ
- vessel operators comply with the orders of the authorities of the licensing State
- operators mark their vessels in accordance with the FAO Standard Specification for the Marking and Identification of Fishing Vessels
- vessel operators register automatic location communicators on the VMS Register of Foreign Fishing Vessels.[64]

6. PORT STATE MEASURES

IUU fishers ultimately need to bring their catch to port for landing or transshipment.[65] Some States, unwittingly or not, allow their ports to be used for this purpose and thereby facilitate IUU fishing. Other States, either on their own or in cooperation with like-minded States, have begun to limit and regulate access to their ports as a means to control IUU fishing. Increasing the strength and coordination of port State measures, as described in the IPOA-IUU, will be necessary.

International law generally recognizes that a State has full sovereignty with respect to ports in its territory. Generally speaking, a State may:

- Deny port access to vessels registered in other States[66]

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[64] FFA, Harmonised Minimum Terms and Conditions for Foreign Fishing Access as amended by FFC34 (24-28 November 1997)."

[65] When used in these guidelines, the term "port" includes off-shore terminals.

[66] The IPOA-IUU reaffirms a well-known exception to this rule; *i.e.* that a State should allow a vessel to enter its port for reasons of *force majeure* or distress or for rendering assistance to those in danger or distress. However, the rendering of assistance to a vessel in distress would not normally require a port State to allow a vessel *to land or transship fish* in its port.

- Prohibit vessels registered in other States from landing or transshipping fish in its ports
- Require vessels seeking port access to provide information relating to their identity and activities
- Inspect vessels that are voluntarily in one of its ports

The international community has been developing port State measures for some time, primarily to promote compliance with vessel safety and environmental standards adopted under the auspices of the IMO.[67] Recent international instruments relating to fisheries have also begun to elaborate certain port State measures for the purpose of promoting compliance with fishery conservation and management standards. The use of port State measures for this purpose is now regarded as both a duty and a right.[68]

6.1 Basic Port State Measures

The IPOA-IUU builds upon these recent instruments in calling on all port States to develop and apply control measures to prevent, deter and eliminate IUU fishing.

Port State measures should be applied in a fair, transparent and non-discriminatory manner. In addition, a port State should treat any information obtained from foreign vessels in its port in accordance with any applicable confidentiality requirements.

A port State can implement some control measures even before vessels enter its ports. As set forth in paragraph 55 of the IPOA-IUU, a port State should require foreign fishing vessels seeking port access to provide at a minimum:

- reasonable advance notice of their entry into port
- a copy of their authorization to fish
- details of their fishing trip and quantities of fish on board

A port State should also require other foreign vessels involved in fishing-related activities to provide comparable data before entering port. Receipt of such data is particularly important in the case of transport vessels that may be carrying fish transshipped at sea.

By obtaining this information in advance of possible port entry, a port State will enhance its ability to determine whether the vessel has engaged in or

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[67] For further discussion, see "Regional Port State Control Agreements: Some Issues of International Law," by Ted L. McDorman.

[68] See, *e.g.* the UN Fish Stocks Agreement, article 23; Code of Conduct, article 8.3; and the FAO Compliance Agreement, article V.2.

supported IUU fishing. For example, a port State may have received earlier notification from another State or from a RFMO that a particular vessel was sighted fishing in a closed area or using prohibited fishing gear. Information obtained from a vessel seeking port entry may indicate that the vessel in question may be the one that was the subject of the earlier notice. If so, the port State could deny the request for access altogether or, alternatively, grant the vessel access but subject it to a thorough inspection while in port.

A State should only grant foreign fishing vessels access to its ports where the State has the capability to conduct vessel inspections. During such inspections, a port State should collect at least the following information, which should be provided to the flag State and, where appropriate, to the relevant RFMO:

- the flag State of the vessel and identification details
- name, nationality, and qualifications of the master and the fishing master
- fishing gear
- catch on board, including origin, species, form, and quantity
- where appropriate, other information required by a RFMO or international agreement
- total landed and transshipped catch

The information collected in the course of a vessel inspection will give the port State an even stronger basis on which to determine whether the vessel has engaged in or supported IUU fishing. If the port State has reasonable grounds[69] for suspecting that a vessel in its port has done so, the IPOA-IUU calls on the port State:

- not to allow the vessel to land or transship fish in its port
- immediately to report the matter to the flag State
- if the suspected IUU fishing may have taken place in waters under the jurisdiction of another State or in waters under the purview of a RFMO, immediately report the matter to that State and/or RFMO as well

In some circumstances, the port State may take additional action. For example, if the suspected IUU fishing may have taken place in waters under the jurisdiction of the port State, that State has the responsibility to exercise its

[69] Paragraph 59 of the IPOA-IUU calls for certain actions by a port State when it has "reasonable grounds" to suspect that a vessel has engaged in or supported IUU fishing. Paragraph 56 calls upon a port State to deny a vessel the ability to land or transship fish in port when it has "clear evidence" that the vessel has engaged in IUU fishing.

jurisdiction as a *coastal* State to investigate and, if appropriate, prosecute and penalize those responsible for the IUU fishing.

Even where the suspected IUU fishing may have taken place in waters beyond the jurisdiction of the port State, the port State may take action against the vessel and its operators with the consent of, or at the request of, the flag State.

As the use of port State controls do not necessarily entail significant resources, they represent a promising avenue for implementation by developing States. During port visits, enforcement officials should, at the very least, board the vessels, examine their logbooks and collect other relevant information. This would not entail enormous financial costs but would require some training in boarding and inspection techniques. This could be a useful focus for assistance to developing States, discussed further in Section 9 of these guidelines.

6.2 Examples of some Port State Measures in Use[70]

Measures Adopted by Individual States.

Canada generally denies port access to vessels that undermine conservation measures by fishing contrary to conservation regimes established by RFMOs of which Canada is a member.[71]

The European Union instructs its port authorities to allow vessels from non-EU States to offload fish that were caught on the high seas only if they have been satisfied that the fish have been caught outside the regulatory areas of any competent RFMO of which the European Community is a member, or that the fish have been caught in compliance with conservation and management measures adopted by the RFMO of which the Community is a member.[72]

Icelandic legislation bans the landing, transshipment and selling of catch in Icelandic ports from a foreign fishing vessel that has violated agreements on utilization and preservation of living marine resources to which Iceland is a party. Such vessels may not be provided with services within the Icelandic EEZ nor from Icelandic ports.[73]

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[70] Much of the information in this subsection is drawn from T. Lobach, supra note 34.

[71] See Coastal Fisheries Protection Act (R.S.C. 1970, c.C.21) Sections 3 and 4, and Coastal Fisheries Protection Regulations (C.R.C., 1978, c. 413), Section 5.

[72] See EU Control Regulation 2847/93, as amended.

[73] See Article 3 of Act No 228 April 1998 concerning fishing and processing by foreign vessels in Iceland's exclusive fishing zone.

Japan prohibits port calls by tuna longline vessels registered in certain States, following identification of those States by ICCAT as diminishing the effectiveness of resource management measures regarding Atlantic bluefin tuna.[74]

Norway denies port access to foreign fishing vessels that have taken part in an unregulated fishery on the high seas.[75]

Before a foreign fishing vessel enters a South African port, it must furnish the authorities with proof that it has complied with the reporting requirements of the flag State. When it has done so and has reported its current position, the authorities will consent to the vessel entering a South African port and will furnish it with a permit. However, the vessel is not normally permitted to offload its catch.

The United States of America generally denies foreign vessels the ability to land or transship fish in U.S. ports, except for a small number of ports located in U.S. insular territories, such as American Samoa and Guam, or pursuant to special agreements with other States. However, vessels identified as having engaged in large-scale driftnet fishing on the high seas, in contravention of UN General Assembly Resolution 46/216, are denied port access outright. The United States also prosecutes foreign vessels that are voluntarily in its ports for having fished in waters under the jurisdiction of another State in violation of that other State's laws or regulations.[76]

Cooperation Among States Involving in Port State Measures. Action by individual port States may not be sufficient to prevent, deter and eliminate IUU fishing. Ideally, coordinated action among port States – and among port States, flag States and coastal States – would be achieved, including through RFMOs.

For example, Norway and Canada entered into an agreement in 1995 recognising that fishing operations beyond the EEZ of each party for stocks which occur both within that zone and the area beyond must be conducted in a manner which does not undermine the effectiveness of applicable conservation and management measures. Each party will deny access to its ports to vessels that engage in activities that undermine such measures, except in cases of *force majeure*, and will prohibit the landing of the catch of such vessels.[77]

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[74] M. Komatsu, supra note 20.

[75] Regulation No. 1130 of 23 December 1994 concerning the entry into and passage through Norwegian territorial waters.

[76] The Lacey Act, supra note 21, allows the United States Government to prosecute persons subject to U.S. jurisdiction for harvesting fish in violation of foreign law.

[77] Agreement between the Government of the Kingdom of Norway and the Government of Canada on Fisheries conservation and enforcement (signed 30 June 1995).

Port State Measures Adopted by RFMOs. Paragraph 63 of the IPOA-IUU calls upon States, acting through RFMOs, to consider schemes to restrict landings and transshipments of fish harvested by non-members of the RFMO:

> States should consider developing within [RFMOs] port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a [RFMO] and which have not agreed to cooperate with that [RFMO], which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.

In fact, a number of RFMOs have adopted port State schemes in recent years. Some of these schemes follow the approach suggested by paragraph 63 of the IPOA-IUU, in that they deal exclusively with situations involving access to ports of RFMO members by vessels of non-members. Other schemes involve port access by vessels of RFMO members as well. The following material summarizes the types of schemes that have been adopted to date.

NAFO has adopted a regime of port State measures that apply when vessels of NAFO members that have fished for NAFO-regulated stocks are voluntarily in the ports of other members. In such cases, NAFO members must ensure that inspectors are present and that an inspection of the offloading process takes place to verify the species and quantities caught and to collect a variety of related information. The port State must transmit the results of the inspection to the NAFO Secretariat and, upon request, to the flag State as well.[78]

In order to combat IUU fishing by vessels of non-members, NAFO has also adopted a Scheme to Promote Compliance by Non-Contracting Party Vessels with Conservation and Enforcement Measures Established by NAFO,[79] which commits the port States of NAFO to implement certain additional control measures. The Scheme presumes that a non-member vessel that has been sighted engaging in fishing activities[80] in the NAFO Regulatory Area is undermining NAFO conservation and enforcement measures. If such a vessel enters the port

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[78] See Part VII of the NAFO Conservation and Enforcement Measures (NAFO/FC doc. 01/1).

[79] NAFO/GC Doc. 97/6, attached as Appendix III to these guidelines.

[80] The NAFO Scheme defines "fishing activities" quite broadly to include, "fishing, fish processing operations, the transshipment of fish or fish products, and any other activity in preparation for or related to fishing in the NAFO Regulatory Area." As such, the Scheme applies not only to fishing vessels but also to other types of vessels that engage in related activities, including transport vessels.

of a NAFO member, it must be inspected. The port State must prohibit the vessel from landing or transshipping fish unless the vessel can establish that the fish were caught outside the NAFO Regulatory Area or, for certain species only, if they were harvested in accordance with NAFO conservation and enforcement measures. The port States must report the results of such port inspections to the NAFO Secretariat, to all NAFO members and to the flag State of the vessel.[81]

ICCAT has adopted a number of port State measures to promote compliance with its conservation measures, including a port inspection scheme and restrictions on landings and transshipments of catches by non-member vessels.[82]

ICCAT's Revised Port Inspection Scheme,[83] which became effective in 1998, requires ICCAT members to carry out inspections of all tuna fishing vessels in their ports, including vessels of ICCAT members. In the case of apparent violations by a vessel registered in another State, the inspectors must draw up a report containing standardized information and transmit the report to the flag State and to the ICCAT Secretariat within ten days. If a vessel of the port State committed the apparent violation, the inspectors must draw up the same kind of report and transmit it to the ICCAT Secretariat in the same timeframe. In all such cases, the flag State must investigate and, where appropriate, prosecute those responsible, and inform the ICCAT Secretariat of actions taken in this regard.

In adopting the Revised Port Inspection Scheme, ICCAT noted that:

> most ICCAT recommendations can only be enforced during off-loading, and therefore this is the most fundamental and effective tool for monitoring and inspection. ... The purpose of the port inspection scheme is to ensure individual vessel compliance as well as to facilitate overall monitoring of each party's fisheries for ICCAT species. ICCAT hopes that the parties will actually exceed these minimum standards [set forth in the Scheme] in

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[81] This Scheme has been put into practice. In 1999, for example, non-member vessels sighted fishing in the NAFO Regulatory Area attempted to land fish in the Faroe Islands but were prohibited from doing so as they could not prove that the fish were caught outside the NAFO Regulatory Area or in accordance with the NAFO conservation and enforcement measures.

[82] Certain other ICCAT measures call on its members (and those with cooperating status) to take action as port States, including Resolution 94-9 on Vessel Sighting (calling for the collection of information on non-member tuna vessels in ports) and Resolution 96-13 on Improving Completeness of Task I Statistics (similarly calling for collection of information on foreign vessels in port and transmission of such information to the ICCAT Secretariat).

[83] ICCAT Recommendation 97-10, attached as Appendix IV to these guidelines.

order to effect timely and accurate monitoring of landings and transshipments, check compliance with ICCAT management measures, ensure quotas are not exceeded, and collect data and other information on landings and transshipments.

In 1998, ICCAT also adopted a measure similar to NAFO's Scheme to Promote Compliance by Non-Contracting Party Vessels.[84] Any vessel of a non-member that is sighted in the ICCAT Convention Area and may be fishing is presumed to be undermining ICCAT conservation measures. If the vessel voluntarily enters the port of an ICCAT member, it must be inspected. If the inspection reveals that the vessel has onboard any species that are the subject of ICCAT conservation measures, the vessel may not land or transship any fish unless it establishes that the fish were caught outside the Convention Area or in compliance with the ICCAT measures. The port State must transmit the results of the inspection to the ICCAT Secretariat, which will send the information to all ICCAT members and to the flag State as well.

Although NEAFC has not yet adopted a general requirement to conduct port inspections of all fishing vessels, its Scheme to Promote Compliance by non-Contracting Party vessels with Recommendations established by NEAFC closely parallels the NAFO Scheme.[85]

IOTC, in a report of 28 July 1999 to FAO, commented that IUU fishing for tunas can probably only be curbed by port State measures aimed at the activities of flag of convenience vessels, but that Port States must be prepared to forego benefits from transshipment activities related to IUU fishing. Although IOTC has not yet adopted a general requirement for port State inspections or other general controls, an IOTC resolution calls on IOTC members and those with cooperating status to refuse port access to "flag of convenience vessels, which are engaged in fishing activities diminishing the effectiveness of measures adopted by IOTC."[86]

CCAMLR has also not yet adopted a general port inspection scheme, but has adopted a scheme similar to NAFO's scheme relating to non-member vessels.[87] CCAMLR's Catch Documentation Scheme for *Dissostichus* spp.,

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[84] ICCAT Recommendation 98-11 (Ban on Landings and Transhipments), entered into force June 21, 1999.

[85] The NEAFC Scheme was adopted in 1998 and entered into force 1 July 1999. See Annex F of the Report of the Seventeenth Annual meeting of NEAFC.

[86] IOTC Resolution 99/02, Calling for Actions Against Fishing Activities by Large Scale Flag of Convenience Longline Vessels.

[87] Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures, Conservation Measure 118/XVII of the Schedule of Conservation Measures in force (2000/2001).

discussed in Section 7 of these guidelines, also requires action on the part of port State officials.

Paragraph 63 of the IPOA-IUU seeks to promote the sorts of schemes already adopted by NAFO, NEAFC, ICCAT and CCAMLR for addressing non-member fishing through the use of port State measures. In one important respect, however, the IPOA-IUU suggests an improvement in these sorts of schemes. The relevant decisions of these RFMOs each depend on the actual *sighting* of a non-member vessel in order to trigger the presumption that the vessel has been undermining the RFMO's measures. The capacity of States to make such sightings is very limited, unfortunately, especially where the RFMO has responsibilities relating to fisheries over vast ocean areas (as in the case of ICCAT, CCAMLR and a number of other RFMOs).

With this problem in mind, the IPOA-IUU suggests that the presumption in question should be triggered when a non-member vessel is *identified* as being engaged in fishing activities. This broader term would allow the presumption to be triggered when, for example, the analysis of trade data suggests that a vessel is engaged in IUU fishing in waters under the responsibility of a given RFMO.

6.3 Other Possibilities for Coordination

In order to prevent, deter and eliminate IUU fishing within a given region, the possibility of additional agreements on port State measures should be considered. Ideally, such agreements would involve members of any RFMO as well as non-members whose ports are known to be used for landing or transshipping fish regulated by the RFMO.

It is also recommended to formalize co-operation among RFMOs. Such cooperation would be essential in areas where IUU fishing is the concern of two or more regional bodies. For example, the conservation and management of fish resources in the Atlantic Ocean is the responsibility of several RFMOs. A comprehensive port State system would mean that IUU fishing within the area of responsibility of one RFMO should trigger action by port States that are members of other RFMOs.

A regional system of port State measures could also entail common procedures for inspection, qualification requirements for inspection officers and agreed consequences for vessels found to be in non-compliance. Possible common elements could also include, in addition to denial of port access and/or

landing and transshipment of catch, denial of requests for fishing access to coastal State waters and denial of requests for vessel registration.[88]

7. INTERNATIONALLY AGREED MARKET-RELATED MEASURES

International trade in fish and fisheries products has increased dramatically in recent decades. Statistics available to FAO show that, in 1998, virtually all States exported part of their fisheries production, while almost as many States reported fishery imports. In 1988, despite a slight downturn due primarily to the global economic situation, the volume of world-wide exports was almost 50 million tons, valued at $51.3 billion (U.S.), which is nearly three times the volume traded in 1976. When converted into estimated live weight equivalent, this trade represents approximately one third of overall fisheries production.[89]

There are no reliable data to indicate precisely how much of the fish and fisheries products traded internationally are the result of IUU fishing. However, a number of the fish species that figure most prominently in international trade, including tunas and swordfish, are also species known to be targeted by IUU fishers.

The development of the IPOA-IUU took place against the backdrop of a variety of multilateral efforts already underway to restrict international trade in fish and fisheries products harvested through IUU fishing. The IPOA-IUU calls upon all States to develop additional internationally agreed market-related measures to prevent, deter and eliminate IUU fishing. Such measures must be interpreted and applied in accordance with the principles, rights and obligations established by the WTO[90] and implemented in a fair, transparent and non-discriminatory manner. The goal is to prevent international trade in fish and fish

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[88] The Joint FAO/IMO *Ad hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters, which met in Rome 9-11 October 2000, recognized that the mechanism of international or regional Memoranda of Understanding relating to port State control over fishing vessels could be used as an important and effective tool for enhancing fisheries management and for addressing the issue of IUU fishing. Existing regional MOUs for vessels safety and pollution control may provide useful models for port state control over fishing vessels. In addition, national and international experts in these maritime fields may have experience that could benefit the development of analogous instruments and procedures for combating IUU fishing.

[89] SOFIA 2000, p. 34.

[90] For further discussion, see "Illegal, Unreported and Unregulated Fishing: WTO-Consistent Trade Related Measures to Address IUU Fishing," by Linda Chaves ("WTO rules provide flexibility to use trade measures for conservation purposes, subject to certain safeguards against abuse").

products harvested through IUU fishing while not creating unnecessary barriers to trade in other fish and fish products.

Although the IPOA-IUU does not define "market-related measure," that term is generally understood to encompass several types of controls on the importation and exportation of goods. In the context of creating a "toolbox" to combat IUU fishing, examples of such measures mentioned in the IPOA-IUU include multilateral catch certification and trade documentation requirements, as well as import and export restrictions and prohibitions.[91]

7.1 Actions by RFMOs

As noted above, the IPOA-IUU calls for market-related measures that are "internationally agreed." In this respect, RFMOs have served, and will likely continue to serve, as the primary international bodies for development and adoption of market-related measures to combat IUU fishing.

There are several vital functions that RFMOs can perform with respect to market-related measures. One is to identify vessels that have engaged in IUU fishing for stocks under the purview of the RFMO. The IPOA-IUU provides that the identification of such vessels should be made through agreed procedures in a fair, transparent and non-discriminatory manner. Where the identified vessels repeatedly fly the flag of a particular State, the RFMO can also identify that flag State and urge that State to bring the fishing activities of its vessels under control.

The identifications of vessels and flag States can trigger the market-related measures envisioned in the IPOA-IUU. In particular, paragraph 66 of the IPOA-IUU provides that:

> States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant [RFMO] to have been engaged in IUU fishing being traded or imported into their territories.

To fulfil this commitment, States must have some way to know which vessel harvested a particular fish or, at a minimum, the flag State of that vessel. RFMOs can assist in this regard by developing and adopting catch certification and trade documentation schemes. These schemes can help prevent, deter and eliminate IUU fishing by requiring that fish and fish products must be accompanied by forms indicating, for example, when and where the fish were

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[91] Restrictions or prohibitions on the landing or transshipment of fish in port by foreign vessels could also be viewed as "market-related measures." However, the IPOA-IUU and these guidelines consider such measures to fall within the category of port State measures.

harvested and by whom. Catch certification schemes typically require such forms to accompany all fish and fish products to which they apply, whether or not they become part of international trade. Trade documentation schemes cover only fish and fish products that enter international trade.[92]

The following material provides examples of recent market-related measures taken by selected RFMOs, including import prohibitions and documentation schemes. In all cases, it must be emphasized that the market-related measures form only part of a larger range of measures that the RFMOs have adopted to achieve effective conservation and management in general and to combat IUU fishing in particular.

ICCAT has adopted several market-related measures designed to encourage compliance by ICCAT members and cooperation by non-members with the ICCAT's conservation and management decisions.

The Bluefin Tuna Action Plan and Swordfish Action Plan, adopted in 1994 and 1995, respectively, can lead to the mandatory prohibition of imports of the relevant species from non-members whose vessels diminish the effectiveness of the ICCAT conservation measures for those species.[93] Under each Action Plan, ICCAT first identifies non-members whose vessels have been fishing for the species in question in a manner that diminishes the relevant conservation and management measures. ICCAT then requests the identified non-members to rectify those fishing activities. Failure to rectify will lead ICCAT to require all its members to prohibit the importation of fish of the species from the identified non-member. Beginning in 1996, ICCAT has identified a number of non-members under each Action Plan and has imposed prohibitions on imports from several of those.

In 1996, ICCAT adopted a measure that can result in the prohibition of imports of bluefin tuna and swordfish from ICCAT members as well, in the event that the member exceeds its catch limit for the species in question for two consecutive management periods.[94] Pursuant to this measure, ICCAT prohibited imports of bluefin tuna from one of its members in 1999.

ICCAT has also adopted a measure focussed on the problem of unreported and unregulated catches of tuna by large-scale longline vessels in the Atlantic region.[95] Under this measure, ICCAT members are to submit to the ICCAT Secretariat a variety of import and landing data relating to frozen tuna

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[92] For a thorough analysis of such schemes, see "Catch Certifications and Feasibility of Harmonizing Certifications Among Regional Fisheries Management Bodies," by Peter M. Miyake.

[93] See ICCAT Resolution 94-3 and ICCAT Resolution 95-13.

[94] See ICCAT Recommendation 96-14.

[95] See ICCAT Resolution 98-18.

products. On the basis of that data and other pertinent information, ICCAT may identify both members and non-members whose large-scale longline vessels have been diminishing the effectiveness of ICCAT conservation and management measures and request those identified to take remedial action. Failure to take such action can, once again, lead to prohibitions on imports. Pursuant to this measure, ICCAT decided in 2000 to prohibit the importation of bigeye tuna from one ICCAT member and from four non-members.

Finally, ICCAT has maintained a Bluefin Tuna Statistical Document program for nearly a decade.[96] This program, which was applied first for frozen bluefin tuna and later to fresh bluefin tuna as well, represented ICCAT's initial attempt to deal with problems of IUU fishing for bluefin tuna in the Atlantic region. The primary objective of the program is to increase the accuracy of bluefin tuna catch statistics by verifying the flag State of the harvesting vessel, the area and time of catch. In doing so, the program also helps ICCAT estimate the amount of unreported bluefin tuna catches.

Under the Bluefin Tuna Statistical Document program, all ICCAT members must require that every bluefin tuna it imports be accompanied by a statistical document validated by the flag State of the harvesting vessel.[97] The document must contain at least the following information:

- the name of the country issuing the document
- the name of the exporter and the importer
- the area of harvest of the fish in the shipment (*i.e.* for the Atlantic Ocean, the areas would be the east, west or Mediterranean Sea),
- the gear utilized to catch the fish
- the type of product and total weight
- the point of export.[98]

In 1999, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) adopted a statistical document program for southern bluefin tuna modelled closely on the ICCAT program. The objective of the CCSBT program, which became effective on 1 June 2000, is the same as well – to combat IUU fishing by monitoring the international trade in southern bluefin tuna. Under the

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[96] See ICCAT Recommendations 92-1 and 92-3 and numerous subsequent recommendations and resolutions through which ICCAT later refined the program.

[97] As a practical matter, Japan has the primary role in making the program effective, as it imports the vast majority of bluefin tuna that is traded internationally. In 2001, ICCAT's Standing Committee on Statistics and Research reported that "various measures taken by ICCAT to curb IUU fishing activities ... appear to be having some positive effects as seen in the decline in bluefin tuna imports to the Japanese market from IUU fishing vessels."

[98] In 2000, ICCAT decided to create similar statistical document programs for bigeye tuna and swordfish. See ICCAT Recommendation 00-22.

program, every imported southern bluefin tuna must be accompanied by a statistical document validated by the flag State of the harvesting vessel and containing information that is virtually identical to the information required by ICCAT. However, CCSBT also requires that the time of capture must be noted on the document. Copies of all Southern Bluefin Tuna Statistical Documents must be sent to the Executive Secretary on a quarterly basis. The Executive Secretary circulates and reports on the summary data collected on biannual basis.[99]

In March 2000, the CCSBT also adopted a plan of action to identify non-members with vessels engaging in fishing activities that diminish conservation and management for southern bluefin tuna, similar to one adopted by ICCAT in 1994. Under the plan, CCSBT may require its members, consistent with their international obligations, to prohibit imports of southern bluefin tuna from identified non-members who fail to take corrective action.[100]

IOTC has adopted a statistical document program for bigeye tuna. By 1 July 2002, or as soon as possible thereafter, IOTC members must require that all imports of bigeye tuna into their territories be accompanied by a statistical document that is modelled on ICCAT's statistical document for bluefin tuna. However, bigeye tuna caught by purse seine vessels and by pole and line (bait) vessels and are destined principally for canneries in the IOTC Convention Area are not subject to this requirement.[101]

CCAMLR has recently adopted an innovative Catch Documentation Scheme for Patagonian toothfish and Antarctic toothfish (*Dissostichus* spp.), valuable resources that have been overexploited, particularly through high levels of IUU fishing. The CCAMLR decision outlining the Catch Documentation Scheme is attached as Appendix V to these guidelines.[102]

Perhaps the primary difference between the CCAMLR Catch Documentation Scheme and the ICCAT and CCSBT statistical documentation programs is that the former covers all retained harvests of the species in

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[99] See Paragraph 21 of the Report of the Sixth Annual Meeting (Second Part) of the CCSBT, March 2000, and Attachment J to that Report.

[100] See Paragraph 13 of the Report of the Sixth Annual Meeting (Second Part) of the CCSBT, March 2000, and Attachment I to that Report.

[101] See IOTC Resolution 01/06, Recommendation by IOTC Concerning the IOTC Bigeye Tuna Statistical Document Programme.

[102] CCAMLR Conservation Measure 170/XX. Additional documents pertaining to the Catch Documentation Scheme are available on the CCAMLR website: www.ccamlr.org.

question, while the latter only covers those fish and fish products that enter international trade.[103]

The Scheme is designed to allow each CCAMLR member to determine the origin of toothfish landed in, imported into or exported from its territory and to determine whether the toothfish were harvested in the CCAMLR Convention Area in a manner consistent with CCAMLR conservation measures. Another objective of the Scheme is to promote better conservation and management of toothfish overall.

To make these determinations possible, flag States issue catch documents to the vessels that they authorize to fish for toothfish in the CCAMLR Convention Area (and to their vessels that intend to fish for toothfish outside the Convention Area). Each vessel must complete a catch document to cover every harvest of toothfish that it lands or transships and must report to its flag State the details of its trip and catches, landing and transshipments.[104] The flag State must then determine whether the catch landed or transshipped, as reported by the vessel, is consistent with its authorization to fish. If so, the flag State conveys a unique confirmation number to the vessel, which the vessel enters on the catch document.

The completed catch documents follow the harvested toothfish wherever they go. Every CCAMLR member must require that all toothfish landed or transshipped in areas under its jurisdiction be accompanied by a completed catch document. Similarly, every CCAMLR member must require that all imports of toothfish into its territory be accompanied by a completed catch document that includes an export (or re-export) validation by the exporting State, which must be examined and verified by its customs authorities or other appropriate officials.

Every CCAMLR member must promptly provide to the CCAMLR Secretariat copies of all export-validated catch documents that it has issued or received. On an annual basis, every CCAMLR member must also report to the CCAMLR Secretariat data on the origin and amounts of its toothfish imports and exports, based on the catch documents.

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[103] As adopted, the CCAMLR Catch Documentation Scheme applies only to harvests of Patagonian toothfish in the CCAMLR Convention Area. However, because Patagonian toothfish are also caught outside the Convention area, CCAMLR requests flag states at a minimum to verify that those fish have been caught by a vessel licensed to fish for that stock.

[104] Please refer to Appendix V to these guidelines for a list of the information included in the catch document.

While these catch documentation and certification schemes should certainly help to prevent, deter and eliminate IUU fishing, care should be taken that they do not overly burden legitimate fishers, dealers and brokers who are seeking to comply with the new paperwork requirements. To address this concern, paragraph 76 of the IPOA-IUU provides that these schemes should be standardized to the extent feasible and that they should rely on electronic means where possible. Paragraph 91 of the IPOA-IUU further called upon FAO to convene an Expert Consultation to develop recommendations for implementing this provision. The Expert Consultation took place in January 2002.[105]

7.2 Other Market-Related Measures

In addition to the development and adoption of import controls and documentation schemes, the IPOA-IUU calls upon States to take other market-related measures to prevent, deter and eliminate IUU fishing.

Paragraph 71 of the IPOA-IUU, for example, urges States to improve the transparency of their markets to allow the traceability of fish or fish products. The concept of *traceability* is related to that of *certification*, but differs in one important respect. The certification schemes discussed in the previous section seek to allow a State to determine where and when a fish was harvested and by whom (and, in the case of the CCAMLR scheme, whether the harvest was consistent with CCAMLR conservation rules). Traceability seeks to allow a given product to be traced through all stages of production and distribution, not just at the moment of importation, landing or transshipment.

The European Union is moving forward on initiatives to improve the traceability of fish products as part of a larger effort to promote food hygiene and safety. As of January 2002, all fishery products marketed in the European Union must include proper marking or labels indicating the species of the product, the production method (caught at sea, in inland waters or farmed) and the catch or production area.[106] These requirements may also have benefits for restricting the marketing of IUU fish in the European Union.[107]

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[105] See Report of the Expert Consultation of the Regional Fisheries Management Bodies on the Harmonization of Catch Certifcation. There are also examples of States that have implemented multilateral market-related measures to combat IUU fishing outside the framework of a RFMO. Members of the FFA, for example, have prohibited the importation of fish harvested illegally in waters under the jurisdiction of other FFA members.

[106] EU regulation 104/2000, article 4.

[107] Another project based in the European Union, known as TRACEFISH, is developing means to achieve an electronic system to trace fish and fish products from the moment of harvest to the moment of final sale. More information on the project is available at the webiste of TRACEFISH: www.tracefish.org.

States can also combat IUU fishing through the dissemination of information to individuals and companies in their territories whose activities are related to fishing. Paragraph 73 of the IPOA-IUU calls on States to make such individuals and companies ("importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public") aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing. Similarly, paragraph 74 calls on States to make their fishers aware of the detrimental effects of doing business with others who do business with IUU fishers.[108]

To fulfil these commitments, States could undertake publicity campaigns using various media, including notices to the public, press releases and targeted communications to relevant industry groups. Paragraphs 73 and 74 also suggest that States could enact legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. Such legislation could be drafted along the lines of the model provided in footnote 25, supra, which is repeated here for the sake of convenience:

> A person subject to the jurisdiction of [State] who –
>
> (a) on his own account, or as partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or
>
> (b) causes or permits a person acting on his behalf, or uses a fishing vessel, to land, import, export, transport, sell, receive, acquire or purchase,
>
> any fish taken, possessed, transported or sold contrary to the law of another State or in a manner that undermines the effectiveness of conservation and management measures adopted by a Regional Fisheries Management Organization shall be guilty of an offence and shall be liable to pay a fine not exceeding (insert monetary value).

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[108] A number of RFMOs have also called on their members to take such measures. In 1999, for example, the IOTC adopted a Resolution 99/02 ("Actions Against Fishing Activities by Large-scale Flag of Convenience Longline Vessels"), which, among other things, called on IOTC members to urge importers and others in the market chain to refrain from any transactions involving this catch and to educate the public not to purchase product derived from this catch. ICCAT Resolution 99-11 contains very similar language. Japan has provided guidance to its importers, transporters and equipment manufacturers, asking them to refrain voluntarily from conducting business with vessels identified by ICCAT as undermining ICCAT's measures. See M. Komatsu, supra note 20.

8. IMPLEMENTATION OF THE IPOA-IUU THROUGH RFMOS

8.1 Role of RFMOs in Addressing IUU Fishing

As the preceding sections have demonstrated, RFMOs[109] have a central role to play in preventing, deterring and eliminating IUU fishing. Many of the world's most valuable stocks of fish, and a large number of those stocks most subject to significant IUU fishing, fall under the purview of RFMOs. Accordingly, RFMOs are uniquely positioned to promote and coordinate efforts to implement the IPOA-IUU.

The RFMOs in existence today vary greatly in their mandates, legal authorities, membership and geographical coverage. Some RFMOs have been in operation for decades, while others are only now coming into existence.[110] Yet despite these differences among the RFMOs, recent international instruments have called upon States to strengthen the capacities of RFMOs in general and to establish new RFMOs to cover regions and/or fish stocks that are not yet covered.[111] The IPOA-IUU has echoed these calls for strengthening the breadth and capacities of RFMOs in order to deal more effectively with problems of IUU fishing.[112]

Many RFMOs face similar problems of IUU fishing. As stocks decline, a number of RFMOs have adopted increasingly stringent rules to manage the fisheries for which they are responsible. Some fishing vessels comply with the stricter rules, but others choose to ignore the rules or to register in States that are not members of the RFMOs and are thus not directly bound by the rules. In this respect, it must be emphasized that vessels of *both members and non-members* of

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[109] The term "regional fishery management organization" (RFMO) would appear to be somewhat narrower than the term "regional fishery body or arrangement". Meetings of "FAO and Non-FAO Regional Fishery Bodies or Arrangements" in 1999 and 2001 have included representatives from more than 30 international institutions that have some responsibility for fisheries issues. A number of these institutions, however, have no mandate for *fishery management* as such and, hence, would not be covered by the term "RFMO".

[110] The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which will establish the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, was opened for signature on 5 September 2000. The Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, which will establish the South-East Atlantic Fisheries Commission, was opened for signature on 20 April 2001.

[111] See, *e.g.* article 13 of the UN Fish Stocks Agreement and, more generally, various provisions of article 7 of the Code of Conduct.

[112] Paragraph 80 of the IPOA-IUU calls for institutional strengthening of RFMOs to deal more effectively with IUU fishing. Paragraph 78 of the IPOA-IUU reaffirms the call to establish RFMOs where they do not yet exist.

RFMOs engage in IUU fishing. No strategy for dealing with IUU fishing can succeed unless it addresses both groups effectively.

Nor can RFMOs succeed if they try to address IUU fishing as a problem unconnected to the rest of their mandates. To the contrary, RFMOs must find ways to integrate measures to control IUU fishing with their other basic missions, including, for example, conservation of resources, control of catches and effort, management of fishing capacity, by-catch reduction, scientific research, general data collection and dissemination, etc.[113]

As highlighted in paragraph 83 of the IPOA-IUU, RFMOs should address the issue of access to the resources under their purview in order to foster cooperation and enhance sustainability. The inability of some RFMOs to agree on equitable access to these resources has undoubtedly contributed to IUU fishing.

In one sense, RFMOs can be only as effective in dealing with IUU fishing as their members (and others who participate in their work) direct or allow them to be. In another sense, however, RFMOs can often accomplish things that their members, acting individually, cannot. One reason for this is that governments are generally more willing to impose controls on their fishing fleets if other governments do so as well. RFMOs are obvious fora for coordinating such action and for creating "level playing fields" on which international fisheries can be conducted. RFMOs also lend legitimacy to measures, such as trade restrictions, that would be controversial if applied unilaterally.

Earlier sections of these guidelines have already touched on a number of the critical steps that RFMOs can take to prevent, deter and eliminate IUU fishing. To review, RFMOs can:

- collect and disseminate information relating to IUU fishing
- identify vessels that are engaging in IUU fishing and coordinate measures against them
- identify States whose vessels are engaging in IUU fishing and can urge identified States to rectify such behaviour

[113] For extensive discussion on actions taken by RFMOs to address IUU fishing and related matters, see "The Role of National Fisheries Administrations and Regional Fishery Bodies in Adopting and Implementing Measures to Combat IUU Fishing," by Judith Swan.

- call on their members to take action against vessels without nationality that are fishing in the relevant region[114]
- adopt rules to ensure that vessel chartering arrangements do not lead to IUU fishing
- adopt port inspection schemes, restrictions on transshipment at sea and schemes creating a presumption that fish harvested by non-member vessels in the relevant region should not be permitted to be landed in ports of members
- adopt catch certification and/or trade documentation schemes
- adopt other market-related measures to combat IUU fishing

8.2 Examples of Measures Adopted by RFMOs

A growing number of RFMOs have already adopted at least some measures directed at preventing, deterring and eliminating IUU fishing, a number of which have been discussed above. One analysis prepared in advance of the Expert Consultation on Illegal, Unreported and Unregulated Fishing that took place in Sydney, Australia, from 15 to 19 May 2000 indicated adoption of the following types of measures at the regional level:

- registers and information relating to IUU fishing (CCAMLR, FFA, GFCM, IATTC, IBSFC, ICCAT, IOTC)
- inspection and enforcement (CCAMLR, FFA, IBSFC, ICCAT, IOTC, NAFO, NEAFC, NPAFC)
- VMS (CCAMLR, ICCAT, IOTC, FFA, NAFO, NEAFC)
- presumptions (CCAMLR, ICCAT, NAFO)
- landings, port inspection and transshipments (CCAMLR, CCSBT, IBSFC, IATTC, ICCAT, IOTC, NAFO, NEAFC)
- trade measures (CCAMLR, CCSBT, IBSFC, ICCAT, IOTC, NPAFC)
- cooperation with non-members (CCAMLR, CCSBT, GFCM, IATTC, ICCAT, IOTC, NAFO, NASCO, NPAFC)[115]

For updated information on what these and other RFMOs are doing to prevent, deter and eliminate IUU fishing, please refer directly to their websites, many of which are listed in Appendix VI to these guidelines.

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[114] As discussed in Section 3.2.3 of these guidelines, schemes adopted by ICCAT and NEAFC call upon their respective members to take action against vessels without nationality *in accordance with international law*. To the extent that the rules of international law regarding the permissible scope of such actions may not be entirely clear, RFMOs may wish to provide more specifically which types of actions against stateless vessels should be taken.

[115] For extensive discussion on actions taken by RFMOs to address IUU fishing and related matters, see J. Swan, supra note 113.

8.3 Possibilities for Further Action

Paragraph 80 of the IPOA-IUU suggests a number of ways in which States, acting through RFMOs, can do more to prevent, deter and eliminate IUU fishing. The following material reviews these suggestions in further detail.

8.3.1 Institutional Strengthening

At the most basic level, members of RFMOs should ensure that the RFMOs as institutions have the resources necessary to carry out their assigned functions. This entails, among other things, the adoption of realistic budgets and the prompt payment of assessed contributions.

Institutional strengthening must take place on a broader level as well. The IPOA-IUU reaffirms that States have a duty to cooperate with RFMOs and that they should give effect to that duty either by becoming members of RFMOs or at least by ensuring that their vessels do not undermine measures adopted by RFMOs.[116] In turn, RFMOs should encourage non-members with a real interest in the fishery concerned to become members or should at least develop ways to facilitate cooperation by non-members in the work of RFMOs.[117]

On the basis of these concepts, many RFMOs could strengthen their institutional regimes to deal with IUU fishing by creating more positive bases for interacting with non-members. As noted above, RFMOs are increasingly inviting non-members to become members or at least to attain "cooperating" status.[118] These trends should be continued, as RFMOs cannot hope to manage fisheries effectively if vessels of non-members participate in the fisheries without regard for the measures adopted by the RFMO.

For those States that are not yet willing to join RFMOs (or for those entities not eligible to join), "cooperating" status can provide a flexible arrangement that can reduce the possibility of IUU fishing and enhance the integrity of RFMOs overall. Although the terms and conditions of "cooperating" status can be tailored to fit the particular circumstances of a given RFMO, the basic idea is to create an understanding along the following lines. Those granted "cooperating" status by a RFMO would agree to abide by the basic conservation

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[116] See paragraph 79 of the IPOA-IUU. This provision is drawn in part from article 8(3) of the 1995 UN Fish Stocks Agreement.

[117] See paragraph 83 of the IPOA-IUU. This provision is also drawn in part from article 8(3) of the 1995 UN Fish Stocks Agreement.

[118] See, *e.g.* GFCM Resolution 97/2, adopted at its Twenty-second Session; ICCAT Resolution 94-6 on Coordination with Non-Contracting Parties, and ICCAT Resolution 97-17 on Becoming a Cooperation Party, Entity or Fishing Entity; Resolution of the IOTC Concerning Cooperation with Non-Contracting Parties (Annex M to the Report of the Third Session of IOTC).

and management measures adopted by that RFMO and, in exchange, would be considered eligible for access to some portion of the fishery resources under the purview of the RFMO.

Ultimately, however, "cooperating" status may be more effective and equitable if it is implemented as a temporary arrangement, pending full membership by all those with a real interest in the fishery and that are eligible to join the RFMO. Otherwise, "cooperating" status could evolve into a sort of permanent second-class condition that would not necessarily benefit either the RFMO or those with such status.

Another way in which RFMOs could strengthen their institutional regimes would be to re-examine their decision-making procedures to ensure that decisions concerning IUU fishing can be made promptly and consistently.[119] For example, most RFMOs have one annual plenary meeting (along with a growing number of intersessional meetings often used to deal with specific projects). Incidents of IUU fishing, however, can occur at any time of the year and may require a quick response by a RFMO and its members. To address this circumstance, members of RFMOs may need to authorize RFMO secretariats to be proactive in dealing with individual incidents of IUU fishing; *e.g.* by sending immediate notifications to relevant States and helping with MCS activity.

RFMOs may also wish to consider the relationship between IUU fishing and the use of objection procedures. In this regard, a number of RFMOs were established by treaties that give each member the right to lodge objections to decisions taken by those RFMOs within a certain period of time after the adoption of the decision. Such objections typically free the objecting member from any obligation to abide by the decision in question. Further, the filing of an objection by one member usually allows other members additional time in which to file objections of their own to the same measure.[120]

While it may be inappropriate or impractical in the near-term to amend the various treaties to limit or eliminate such objections, RFMOs could nevertheless consider steps to minimize the possibility that the filing of objections will undermine the integrity of their measures and lead to IUU – particularly *unregulated* – fishing. For example, the RFMOs could adopt

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[119] Cf. article 10(j) of the 1995 UN Fish Stocks Agreement ("In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall ... agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner."). See also paragraph 82.2 of the IPOA-IUU.

[120] For further discussion on objection procedures and other issues relating to the ways in which RFMOs make decisions, see "A Review of Options for Making Decisions to Conserve and Manage Pacific Fish Stocks," prepared by the Center for International Environmental Law.

resolutions calling on those members who file objections (1) to justify their objections; (2) to impose restrictions on their vessels comparable in effectiveness to the measure objected to; and (3) to make known the restrictions that are imposed in lieu of the measure objected to.

8.3.2 Additional Compliance Measures

RFMOs should also develop additional means to promote compliance by their members with adopted conservation and management measures. One fundamental approach that could be better employed is for RFMOs to limit or deny access to the fisheries resources under their purview to fishing vessels of members that do not comply with the measures adopted by the RFMOs, including any obligations to report fisheries data.[121] Another approach, under consideration by CCAMLR and NEAFC, is for all members of RFMOs to deny licenses to fish and port access to any vessels identified by the RFMO as having been involved in IUU fishing, even if the vessels have subsequently been renamed or registered in new States.

RFMOs can encourage the application of consistent penalties imposed on IUU fishers. To this end, Paragraph 21 of the IPOA-IUU calls on each State to:

> ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.

To promote consistency and transparency in the application of sanctions, RFMOs can take steps to urge their members to develop equivalent or standardized penalty schemes. For example, the Convention establishing NPAFC has given that RFMO the authority to "consider and make proposals to the Parties for the enactment of schedules of equivalent penalties for activities contrary to the provisions of this Convention."[122] Another approach is the one adopted by the International Dolphin Conservation Program administered by the IATTC, under which a panel of government, industry and environmental representatives analyse reports of tuna-fishing trips, identify possible infractions,

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[121] In 2001, for example, ICCAT adopted new criteria for allocating its stocks. One of the criteria to be taken into account in making quota allocations is "the record of compliance or cooperation by qualifying participants with ICCAT's conservation and management measures."

[122] Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, article IX.

inform the flag State of those identifications and receive from flag States information on actions taken in response.[123] At a minimum, RFMOs can require their members to report on violations committed by their vessels and penalties imposed as a consequence.[124]

8.3.3 Better Collection and Exchange of Information

RFMOs can be focal points for the collection and dissemination of a wide variety of information relating to IUU fishing. To fulfil this role, however, members of RFMOs must reliably provide information to the RFMOs not only on their own vessels, but also on vessels of other States that fish in waters under their jurisdiction and that use their ports. Members of RFMOs must also be willing to provide appropriate market data to RFMOs, including information on fishery imports and exports. In this regard, Paragraph 80.3 of the IPOA-IUU recognizes that RFMOs should develop and implement "comprehensive arrangements for mandatory reporting."

Paragraph 80.4 of the IPOA-IUU calls on States to establish and cooperate in the exchange of information on vessels engaged in or supporting IUU fishing. RFMOs can serve as hubs for sharing of this information as well. For example, RFMOs can develop lists of vessels that are believed to have engaged in IUU fishing, as well as lists of all vessels fishing in areas under their respective purviews. RFMOs can also develop databases of information concerning fishing violations and prosecutions. The FFA, for example, maintains a database on vessels that have violated the fisheries laws of its members. It might be possible for RFMOs to make such databases generally available to flag States in order for them to know whether a particular vessel seeking registration or a license to fish has previously engaged in IUU fishing.[125]

8.3.4 Improved Monitoring, Control and Surveillance

The collection and dissemination of information described above should also extend to "real time" situations involving possible IUU fishing. In this connection, paragraph 80.7 of the IPOA-IUU encourages:

> development of MCS, including ... real time catch and vessel monitoring systems, other new technologies, monitoring of

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[123] See Annex VII to the 1999 Agreement on the International Dolphin Conservation Program.

[124] See, *e.g.* article 14 of the Convention for the Conservation of Salmon in the North Atlantic Ocean; article 24 of the 1998 NEAFC Recommendation on a Scheme of Control and Enforcement in Respect of Fishing Vessels Fishing in Areas Beyond the Limits of National Fisheries Jurisdiction in the Convention Area.

[125] See T. Aqorau, supra note 33.

landings, port control, and inspections and regulation of transshipment, as appropriate.

To succeed in implementing this provision, States will need to coordinate their activities through RFMOs to a greater extent than they have done so to date. One model of strong cooperation in MCS efforts is provided by the North Pacific Anadromous Fish Commission (NPAFC), whose members coordinate closely in taking action against vessels that may be fishing for salmon and other anadromous stocks on the high seas of the North Pacific Ocean.[126]

The creation of real time catch and vessel monitoring systems to cover major fisheries, for example, will require expansion and harmonization of differing VMS arrangements currently in use by a number of States. Through RFMOs, States can develop common data formats, data sharing arrangements and standards for maintaining the technical integrity of the systems. RFMOs can also serve as a neutral recipient of VMS data to help preserve the confidentiality of any proprietary information that may be involved, while also facilitating the exchange of information necessary for effective MCS.[127]

Similarly, it may be possible to monitor changes of fishing vessel registration in something approaching "real time." Members of RFMOs could be obliged to report promptly to the RFMO on the registration of any new vessels that may operate in a fishery under the purview of the RFMO. To make this system effective, non-members must be encouraged to share such information with RFMOs as well.

RFMOs can also develop schemes for boarding and inspecting fishing vessels on the high seas, as envisioned in paragraph 80.8 of the IPOA-IUU.[128] For some fisheries, it may also be useful to create arrangements under which members can exchange inspectors, with the aim of standardizing approaches to boarding and inspection. It may even be possible to create joint inspection schemes, pursuant to which members of a RFMO provide personnel for a given period of time to serve as inspectors who act on behalf of the RFMO itself.[129]

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[126] See, *e.g.* Report of the Committee on Enforcement, 9th Annual Meeting of NPAFC (2001), NPAFC Doc. 581.

[127] For further discussion of the harmonization of VMS systems, see "Monitoring, Control, Surveillance and Vessel Monitoring System Requirements to Combat IUU Fishing," by John M. Davis.

[128] States that are party to the 1995 UN Fish Stocks Agreement have consented to allow their vessels to be boarded and inspected on the high seas by officials of other States under certain circumstances, in accordance with articles 21 and 22 of that Agreement. RFMOs have the possibility to develop or refine the rules under which such boardings and inspections may be carried out, or to establish alternate mechanisms to ensure compliance.

[129] See, *e.g.* NAFO's Scheme of Joint International Inspection and Surveillance.

As noted in Section 3.2.5 of these guidelines, States should also seek to coordinate their MCS activities through the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities.

8.3.5 Comprehensive Port State Regimes

Those RFMOs that have not already done so should consider the establishment of comprehensive systems for port State measures for fishing vessels. Such systems should include requirements for inspection of vessels in port and exchange of information between port States and flag States in the event inspections indicate the possibility of IUU fishing. The RFMOs should at a minimum consider mandatory inspection in port of all non-member fishing vessels, with obligations to report the findings of such inspections to the RFMO, which can disseminate the reports to other members.

8.3.6 Certification/Documentation Schemes

As discussed in Section 7 above, RFMOs are the obvious fora for developing and refining fisheries certification and documentation schemes. Though quite a few RFMOs have already done so, there may well be the need for additional schemes, or for existing schemes to cover additional species that are harvested or traded internationally. For some fisheries, particularly high value fisheries, RFMOs can compile trade data with which to monitor IUU fishing, as called for in paragraph 80.5 of the IPOA-IUU. However, the proliferation of such schemes has created a threat of its own, as the paperwork burden on legitimate fishers has increased steadily. To help address this problem, RMFOs should work together to standardize these schemes to the extent feasible, including through the use of electronic systems, and thus assist in the implementation of paragraph 76 of the IPOA-IUU.

8.3.7 Controls on Chartering

As discussed in Section 4 above and noted in paragraph 80.14 of the IPOA-IUU, RFMOs may have a role to play in ensuring that chartering arrangements for stocks under their purview do not lead to IUU fishing. Among other things, agreed rules for chartering arrangements can ensure that vessels to do not engage in "flag hopping" to gain access to more than one member's quota. Chartering rules can also provide for the orderly development of fisheries by developing States, while also allowing the RFMO to allocate access to fishery resources in a fair and transparent manner.

8.3.8 Actions in Response to Remaining Non-member Problems

As noted above, paragraph 79 of the IPOA-IUU reaffirms that non-members of RFMOs are not discharged from their duty to cooperate. While RFMOs should certainly seek such cooperation by encouraging non-members to become members, or at least to obtain "cooperating" status, RFMOs must also consider additional steps to deal with those non-members whose vessels continue to engage in IUU fishing.

Some of the measures described earlier in this section are designed to address IUU fishing by vessels of both members and non-members (such as exchange of information, port inspection, certification and documentation schemes, etc.). In addition, paragraph 84 of the IPOA-IUU provides that:

> When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant [RFMO], the member States, acting through the organization, should draw the problem to the attention of that State. If the problem is not rectified, members of the organization may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.

Increasingly, RFMOs have been drawing evidence of IUU fishing to the attention of non-member flag States. ICCAT members, for example, have directed the ICCAT Secretariat to send dozens of inquiries and warnings to non-members whose vessels appear to be undermining the effectiveness of ICCAT measures. Failure of non-members to take corrective action can lead to identification by ICCAT and, ultimately, to trade restrictions. NAFO and NEAFC members have directed their respective secretariats to send similar communications. In 2001, CCAMLR declared that its Secretariat will compile and maintain a list of flags of convenience of vessels operating in the CCAMLR region, together with a consistent process for identifying such flags.[130]

Other RFMOs may need to take similar measures to address persistent IUU fishing by non-members. Flag States whose vessels undermine the effectiveness of measures adopted by a RFMO are failing to abide by their international commitments. Where repeated attempts to seek the cooperation of such States fail or are ignored, other States, acting through RFMOs, must take action, using tools set forth in the IPOA-IUU.

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[130] See Report of the 2001 CCAMLR meeting, paragraph 5.20.

8.3.9 Cooperation among RFMOs and between RFMOs and other International Organizations

Finally, RFMOs should enhance the coordination of their actions to prevent, deter and eliminate IUU fishing. Many RFMOs and related institutions have begun to do so, or at least have expressed the intention of doing so.[131] In particular, RFMOs must increase the speed and scope of the exchange of information on IUU fishing, particularly with respect to fleet movement, compliance, management and trade.[132]

While the mobility of fishing fleets makes cooperation among all RFMOs a necessity, this is particularly true in regions where IUU fishing is the concern of two or more RFMOs. One possibility for reducing IUU fishing throughout such a region would be to link measures adopted by one RFMO with those of the others in that region. For example, ICCAT, NAFO, NEAFC, GFCM and SEAFO could conceivably have an interlocking system for port State measures with respect to fisheries in the Atlantic region.[133]

Other international organizations and mechanisms can contribute to implementation of the IPOA-IUU as well. In 1999, for example, the APEC Fisheries Working Group adopted recommendations on the issuance of "flags of convenience" and on IUU fishing. These actions recommended that each APEC member economy, among other things, discourage its nationals and companies from engaging in activities on fishing vessels that are undermining fishery conservation and management regimes, and promote international cooperation for progressively eliminating such activities. The recommendations also called upon member economies to participate fully in efforts to deal effectively with all forms of IUU fishing, including fishing by vessels flying "flags of convenience."[134]

9. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

Developing States, particularly small island developing States and other developing coastal States, are among those that suffer the most from the adverse effects of IUU fishing. With the exception of some developing States with large fishery sectors, most governments in developing States lack the resources and infrastructure to monitor and enforce capture fishery regulations effectively.

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[131] CCAMLR, CCSBT, FFA, IATTC, IBSFC, ICCAT, IOTC, NAFO, NASCO, NEAFC and NPAFC report participation in, or plans for, coordination with other RFMOs.
[132] J. Swan, supra note 113.
[133] For further discussion of this concept, see T. Lobach, supra note 34.
[134] M. Komatsu, supra note 20.

As a result, IUU fishers often conduct their operations in waters under the jurisdiction of developing States, using vessels registered in the developing coastal States themselves (fishing without licenses or in violation of license restrictions) and vessels registered in other States (poaching or fishing in violation of access restrictions). Many of the problems of IUU fishing that developing coastal States face are common to other States as well (*e.g.*, fishing during closed seasons and in closed areas, use of prohibited gear, misreporting and non-reporting of catch and by-catch, etc.).

Section V (Paragraphs 85 and 86) of the IPOA-IUU calls upon States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, to support training and capacity building and to consider providing financial, technical and other assistance to developing countries so that they can more fully meet their commitments under the IPOA-IUU and other relevant obligations under international law, including their duties as flag States, coastal States and port States. Such assistance should be directed in particular to help such States in the development and implementation of NPOAs.[135]

These guidelines are intended, in part, to provide guidance to developing States on implementation of the IPOA-IUU. Examples of other on-going FAO initiatives to assist developing States in their efforts to deter, prevent and eliminate IUU fishing include:

- the Inter-regional Programme of Assistance to Developing Countries for the Implementation of the Code of Conduct for Responsible Fisheries (Sub-Programme C: Assistance to Developing Countries for Upgrading their Capabilities in Monitoring, Control and Surveillance)[136]
- provision of individual advice to developing States in addressing problems of IUU fishing. In 2001, for example, FAO provided a number of suggestions to the Government of India on this subject.

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[135] The United Nations General Assembly has also recently called on its members to provide assistance to developing States to improve monitoring and control of fishing activities and the enforcement of fishing regulations. See UNGA Resolution 55/8, adopted 30 October 2000.

[136] The programme has been undertaken since 1998 within the FAO/Government of Norway Cooperative Programme. Regional workshops and training courses in MCS were held in 1998 in Kuala Lumpur and Kuala Terengganu, Malaysia, for countries of South and Southeast Asia; Muscat, Sultanate of Oman in 1999 for countries of the Northwest Indian Ocean region; and in Songkhla, Thailand in 2000 for southeast Asian countries. This programme was preceded by the Fisheries Management and Law Advisory Programme, also funded by Norway, which provided advice and assistance on matters which, today, would be embraced by the IPOA-IUU.

FAO is also planning an additional set of complementary and mutually reinforcing activities under its FISHCODE program that seek to address IUU fishing on a broad front. Outputs being proposed, subject to available funding, include a workshop of States that maintain open registries, participation in efforts to standardize certification and documentation requirements relating to fisheries, and further analysis of factors contributing to IUU fishing.[137]

As noted above, Section V of the IPOA-IUU anticipates that other international institutions and mechanisms should support the provision of such assistance to developing States. For example, the World Bank and a number of regional development banks have a number of on-going projects to provide assistance to developing States in the fisheries field, some of which are designed in part to improve the MCS capacity of developing States.[138]

Assistance may also be provided directly from developed States to developing States. One vehicle for the provision of such assistance is the fisheries access agreement. In exchange for receiving access for its vessels to fish in waters under the jurisdiction of a developing State, a developed State might provide assistance to the developing State to combat IUU fishing.

For example, as noted in Section 4 above, a treaty between certain Pacific Island States and the United States of America requires the latter to assist the former in MCS efforts. U.S. vessels fishing pursuant to the treaty bear the full cost of placing observers aboard the vessels so as to achieve observer coverage on 20 percent of all trips. More broadly, the treaty requires the United States to provide technical and economic support to assist the Pacific Island parties to achieve the objective of maximising benefits from the development of their fisheries resources, including through enhancing their capacity to enforce fishing rules.

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[137] For more information on FAO projects in the fisheries field, some of which relate at least in part to preventing, deterring and eliminating IUU fishing, see http://www.fao.org/fi/projects/projects.asp.

[138] For example, the World Bank has an on-going project in Ghana that, among other things, aims to strengthen the capacity of the Government of Ghana in fisheries monitoring, control, surveillance and enforcement. For details, go to http://www4.worldbank.org/sprojects/Project.asp?pid=P000962. The World Bank has also assisted other States in laying the groundwork for sustainable fisheries, including the development of surveillance systems, training and capacity building.

A number of other developed States have been providing assistance to developing States in the fisheries field outside the scope of any access agreement.[139] With the adoption of the IPOA-IUU, it may be expected that such assistance will now explicitly be targeted as well toward efforts to prevent, deter and eliminate IUU fishing.

It is particularly important for developing States to share or pool their resources. Models for such arrangements, discussed in more detail in Section 5.3 of these guidelines, include the FFA (most of whose members are developing States) and the Sub-Regional Fisheries Commission in West Africa.

10. NATIONAL PLANS OF ACTION AND REPORTING ON IMPLEMENTATION

10.1 Development of NPOAs

The IPOA-IUU calls upon all States to develop and adopt, as soon as possible but not later than 3 years after the adoption of the IPOA-IUU (*i.e.* by March 2004 at the latest), NPOAs to further achieve the objectives of the IPOA-IUU and to give full effect to its provisions as an integral part of their fisheries management programs and budgets. A primary purpose of these guidelines is to provide suggestions to national governments on the development of these NPOAs.

As noted above, the IPOA-IUU is a "toolbox" – a set of tools that are available for use in many different situations to combat IUU fishing. Not all tools in the toolbox will be appropriate for use by each State. Nevertheless, to the extent possible, each State's NPOA should at least consider how each of the basic tools could be put to use in the fisheries in which it is involved.

As provided in paragraph 26 of the IPOA-IUU, at least every four years after the adoption of their national plans of action, States should review the implementation of their respective NPOAs for the purpose of identifying cost-effective strategies to increase their effectiveness and to take into account their reporting obligations to FAO under Part VI of the IPOA-IUU.

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[139] See, *e.g.* Canadian Support for Fisheries of the Developing World, http://www.acdi-cida.gc.ca/cida_ind.nsf/vLUallDocByIDEn/C57D4C985741D81F852564500596337?OpenDocument. As mentioned in note 62, supra, Luxembourg has provided funding through FAO for the Surveillance Operations Coordinating Unit of the Sub-Regional Fisheries Commission. Australia, New Zealand and France (New Caledonia) each provide assistance to other members of the FFA, particularly with respect to MCS efforts. The EU and some of its member States, Japan and Norway are among other developed States that provide assistance that can help developing States combat IUU fishing.

10.2 Suggested Format for NPOAs

Each State is of course free to develop its NPOA in whatever way corresponds best to its particular situation. One obvious way to organize a NPOA, however, would be to follow the outline of the IPOA-IUU, using headings such as "All State Responsibilities," "Flag State Responsibilities," "Coastal State Measures," etc. The elements for inclusion under each heading could be developed along the following lines:

1 ALL STATE RESPONSIBILITIES

- 1.1 Review of national laws, regulations and practices relating to IUU fishing
- 1.2 General measures needed to conform national laws, regulations and practices to international standards
- 1.3 Plans to become party to and/or implement relevant international instruments (1982 UN Convention, 1993 FAO Compliance Agreement, 1995 UN Fish Stocks Agreement, Code of Conduct, relevant agreements establishing RFMOs) to the extent not yet done
- 1.4 Measures to improve State control over nationals
- 1.5 Measures to deal with vessels without nationality that conduct IUU fishing
- 1.6 Elimination of subsidies and other economic support relating to IUU fishing
- 1.7 Measures to improve monitoring, control and surveillance

2 FLAG STATE RESPONSIBILITIES

- 2.1 Measures to improve registration system for fishing vessels
  - 2.1.1 Measures to extend registration requirement to as many vessels as possible, including small vessels
  - 2.1.2 Measures to ensure ability to control vessels before granting registration
  - 2.1.3 Measures to coordinate activities of relevant government agencies involved in the registration process
  - 2.1.4 Measures to ensure that chartering arrangements do not lead to IUU fishing
- 2.2 Creation of a comprehensive record of fishing vessels
  - 2.2.1 Inclusion of data from Box 2 of these guidelines
  - 2.2.2 Steps to submit data on high seas fishing vessels to FAO
- 2.3 Measures to require vessels to receive an authorization to fish prior to engaging in fishing activities

2.4 Measures to control transport and support vessels
2.5 Other control measures
2.5.1 Measures to track fishing vessels and their activities (including data collection and reporting requirements, VMS, observer programmes, etc.)
2.5.2 Measures to improve at-sea surveillance, including through consensual boarding and inspection arrangements on the high seas
2.5.3 Measures to ensure proper marking of fishing vessels and fishing gear
2.5.4 Imposition of sufficiently severe penalties for IUU fishing

3 COASTAL STATE MEASURES

3.1 Recap of flag State measures to combat IUU fishing in waters under national jurisdiction by vessels of the coastal State
3.2 Measures to combat IUU fishing in waters under national jurisdiction by foreign vessels, including through use of access agreements
3.3 Cooperation with other coastal States to combat IUU fishing

4 PORT STATE MEASURES

4.1 Improvement of port State measures to combat IUU fishing
4.1.1 Requirement that foreign fishing vessels provide advance notification in seeking port access
4.1.2 Measures to improve inspection of foreign fishing vessels in port
4.1.3 Measures to be taken if evidence is found to indicate that a foreign vessel in port has engaged in or supported IUU fishing, including prohibition on landing or transshipment of fish in port
4.1.4 Denial of port access to foreign vessels suspected of engaging in or supporting IUU fishing
4.2 Cooperation with other port States to combat IUU fishing
4.3 Implementation of port State measures adopted by RFMOs

5 INTERNATIONALLY AGREED MARKET-RELATED MEASURES

5.1 Implementation of market-related measures adopted by RFMOs
5.1.1 Provision of information to RFMOs on vessels suspected of engaging in or supporting IUU fishing

5.1.2 Measures to prevent importation of fish and fish products from vessels and/or States identified by RFMOs as engaging in or supporting IUU fishing

5.1.3 Measures to implement catch documentation and certification schemes adopted by RFMOs

5.2 Implementation of other market-related measures

5.2.1 Measures to improve the transparency of markets to allow the traceability of fish or fish products

5.2.2 Measures to disseminate information on IUU fishing to individuals and companies whose activities are related to fishing

5.3.3 Enactment of legislation that makes it a violation to conduct business or to trade in fish or fish products derived from IUU fishing

6 IMPLEMENTATION OF IPOA-IUU THROUGH RFMOS

6.1 Recap of actions to implement measures adopted by RFMOs to combat IUU fishing

6.2 Proposals for institutional strengthening of RFMOs

6.3 Proposals for additional compliance mechanisms to be adopted by RFMOs

6.4 Proposals for better collection and exchange of information through RFMOs

6.5 Proposals to strengthen monitoring, control and surveillance through RFMOs

6.6 Proposals to develop comprehensive port State systems through RFMOs

6.7 Proposals to improve documentation and certification schemes of RFMOs

6.8 Proposals to regulate chartering arrangements through RFMOs

6.9 Proposals to address remain non-member IUU fishing through RFMOs

6.10 Proposals to formalize cooperation among RFMOs and between RFMOs and other international organizations

7 SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

7.1 Participation in efforts to assist developing States through multilateral mechanisms

7.2 Bilateral assistance to developing States

10.3 Suggested Format for Reports to FAO on Implementation

As provided in paragraph 87 of the IPOA-IUU, States and RFMOs should report to FAO on their progress in implementing the IPOA-IUU and their respective NPOAs as part of their biennial reporting to FAO on the Code of Conduct. FAO, in turn, will publish these reports in a timely manner.

As with the NPOAs, each State and RFMO is free to organize these reports in whatever way corresponds best to its particular situation. However, analysis of these reports would be facilitated if they followed the outline of the IPOA-IUU, using headings such as "All State Responsibilities," "Flag State Responsibilities," "Coastal State Measures," etc., along the lines of the outline suggested above for NPOAs.

11. CHECKLIST OF RECOMMENDED ACTIONS

All States

- All States that have not yet done so should become party to the 1982 UN Convention, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement.

- All States should fully implement the Code of Conduct and its related International Plans of Action.

- All States whose vessels participate in fisheries regulated by RFMOs should either become members of those RFMOs or, at a minimum, apply the conservation and management measures adopted by those RFMOs to their own vessels or adopt measures consistent with those conservation and management measures.

- All States should cooperate to establish new RFMOs as needed for coordinated conservation and management of fish stocks.

- All States should develop national plans of action to prevent, deter and eliminate IUU fishing as envisioned in paragraph 25 of the IPOA-IUU.

- All States should undertake a thorough review of their existing laws, regulations and practices that may relate to IUU fishing.

- All States should make it a violation of their law for their nationals to violate the fishery conservation and management laws of any other State or to undermine the effectiveness of conservation and management measures adopted by a RFMO.

- All States should discourage their nationals from reflagging fishing vessels, or from initially registering new vessels, in States that are identified by a RFMO as undermining the effectiveness conservation and management measures adopted by that RFMO.

- All States should ensure that their nationals are aware of the effects of IUU fishing and should discourage them from doing business with those engaged in IUU fishing.

- All States should promptly terminate subsidies and other forms of economic support for IUU fishing.

- All States should consider participating in the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities.

Flag States

- Flag States should require their fishing vessels, including as many small fishing vessels as possible, to be registered.

- Before a flag State registers a fishing vessel, it should ensure that it has the means to control the fishing activities of the vessel.

- Flag States should generally avoid registering a vessel that has a history of IUU fishing or that appears to have been involved in "flag hopping."

- A flag State should maintain a comprehensive record of fishing vessels entitled to fly its flag, containing the information set forth in Box 2 of these guidelines.

- A flag State should prohibit its vessels from fishing without express authorization and should grant such authorization only to vessels properly registered in its territory and entered in its record of fishing vessels.

- A flag State should coordinate the functions of registering fishing vessels and granting authorizations to fish among its responsible government agencies.

- Where a vessel has been identified as having engaged in IUU fishing, flag States should ensure that their other vessels do not tranship fish from that vessel, re-supply that vessel or assist it in other ways (except for humanitarian purposes such as in cases of distress).

- Flag States should closely control the transshipment process.

  - Flag States should consider prohibiting transshipment of fish at sea entirely.

  - At a minimum, flag States should require prior authorization for transshipment of fish at sea and should require vessels to report information in paragraph 49 of the IPOA-IUU.

- Flag States should ensure that their vessels fishing on the high seas do not undermine fishery conservation and management measures that apply in any high seas area.

  - Vessels should not fish on the high seas except pursuant to express authorization to do so issued by the flag State.

  - A flag State should not grant such authorization unless it can ensure that the vessel will not undermine fishery conservation and management measures that apply in a high seas area in which the vessel will operate.

- If a flag State cannot monitor the fishing activities of its vessels on the high seas, it should consider authorizing other States to board and inspect those vessels on its behalf.

- Flag States should submit data to FAO on its high seas fishing vessels and update those submissions regularly.

Coastal States

- A coastal State should know the location of all vessels fishing in waters under its jurisdiction.

  - Tools for tracking vessels include mandatory position reporting by radio and mandatory maintenance of logbooks with frequent recording of vessel position.

  - Coastal States should consider developing programs to place independent observers on board fishing vessels to monitor vessel positions and to observe fishing operations.

  - Coastal States should strengthen their capacity to conduct regular patrols in areas where vessels are known to fish.

- Coastal States should phase in the required use of VMS by vessels fishing in waters under their jurisdiction.

- A coastal State should be able to determine the catch of each vessel fishing in waters under its jurisdiction.

  - A coastal State should require such vessels to report on their fishing activities at regular intervals as a condition of receiving an authorization to fish.

  - VMS, radio and fax methods all provide time-sensitive means for such reporting.

  - Mandatory reporting of catch data through logbooks is also common.

- A coastal State should be able to verify the accuracy of reported data and should penalize the failure to report and the misreporting of data. Approaches include routine inspections in port and the use of independent on-board observers.

- A coastal State should ensure that waters under its jurisdiction are clearly delineated and marked on charts.

- A coastal State should carefully control fisheries access by foreign vessels.

  - A coastal State should avoid granting access to vessels with a history of IUU fishing.

  - Before a coastal State permits a vessel registered in another State to fish in waters under its jurisdiction, it should verify that the vessel has received from its flag State a specific authorization to fish in waters beyond the jurisdiction of the flag State.

  - Ideally, a coastal State should not permit a foreign vessel to fish in waters under its jurisdiction unless it is requested to do so by the flag State, or the flag State at least indicates that it does not object to the proposed fishing.

  - A coastal State should maintain a record of foreign vessels authorized to fish in waters under its jurisdiction.

  - A coastal State should require foreign vessels granted fisheries access to use VMS so as to have real-time knowledge of vessel positions and regular data reports.

- A coastal State should consider requiring foreign vessels, or a certain percentage of them, to carry independent observers.

- Coastal States in a given region should consider whether it would be advantageous to develop joint or common rules for fisheries access.

Port States

- A port State should require foreign fishing vessels seeking port access to provide at a minimum:

  - reasonable advance notice of their entry into port;

  - a copy of their authorization to fish; and

  - details of their fishing trip and quantities of fish on board.

- A port State should also require other foreign vessels involved in fishing-related activities, particularly transport vessels, to provide comparable data before entering port.

- A State should only grant foreign fishing vessels access to its ports where the State has the capability to conduct vessel inspections. During such inspections, a port State should collect at least the following information, which should be provided to the flag State and, where appropriate, to the relevant RFMO:

  - the flag State of the vessel and identification details;

  - name, nationality, and qualifications of the master and the fishing master;

  - fishing gear;

  - catch on board, including origin, species, form, and quantity;

  - where appropriate, other information required by a RFMO or international agreement; and

  - total landed and transshipped catch.

- If a State has reasonable grounds for suspecting that a vessel in its port has engaged in or supported IUU fishing, the port State should:

  - not to allow the vessel to land or transship fish in its port;

- immediately to report the matter to the flag State; and

- if the suspected IUU fishing may have taken place in waters under the jurisdiction of another State or in waters under the purview of a RFMO, immediately report the matter to that State and/or RFMO as well.

- If the suspected IUU fishing may have taken place in waters under the jurisdiction of the port State, that State should exercise its jurisdiction as a *coastal* State to investigate and, if appropriate, prosecute and penalize those responsible for the IUU fishing.

- If the suspected IUU fishing may have taken place in waters beyond the jurisdiction of the port State, the port State may take action against the vessel and its operators with the consent of, or at the request of, the flag State.

- Port States, acting in cooperation and in particular through RFMOs, should adopt and/or strengthen schemes to prevent landings and transshipments of fish harvested through IUU fishing.

- Port States, acting through RFMOs, should strengthen schemes for addressing non-member fishing by adopting a presumption against landings by non-member vessels that are *identified* as having engaged in IUU fishing (and not only against vessels that are actually *sighted* while engaging in IUU fishing).

Internationally Agreed Market-Related Measures

- States should develop internationally agreed market-related measures to prevent, deter and eliminate IUU fishing. Such measures should be interpreted and applied in accordance with the principles, rights and obligations established by the WTO and implemented in a fair, transparent and non-discriminatory manner.

- RFMOs should identify vessels that have engaged in IUU fishing. Where identified vessels repeatedly fly the flag of a particular State, the RFMO should also identify that flag State and urge it to bring the fishing activities of its vessels under control.

- States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by an RFMO to have been engaged in IUU fishing being traded or imported into their territories.

- To assist States in implementing this commitment, RFMOs should adopt and/or strengthen catch certification and trade documentation schemes.

- States should disseminate information on IUU fishing to individuals and companies in their territories whose activities are related to fishing and encourage them not to do business with others who are engaged in or support IUU fishing.

- States should enact legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing.

Implementation of IPOA-IUU through RFMOs

- To help prevent, deter and eliminate IUU fishing, RFMOs should:

  - collect and disseminate information relating to IUU fishing;

  - identify vessels that are engaging in IUU fishing and coordinate measures against them;

  - identify States whose vessels are engaging in IUU fishing and urge those States to rectify such behaviour;

  - call on their members to take action against vessels without nationality that are fishing in the relevant region;

  - adopt rules to ensure that vessel chartering arrangements do not lead to IUU fishing;

  - adopt port inspection schemes, restrictions on transshipment at sea and schemes creating a presumption that fish harvested by non-member vessels in the relevant region should not be landed in ports of members;

  - adopt catch certification and/or trade documentation schemes; and

  - adopt other market-related measures to combat IUU fishing.

- Members of RFMOs should ensure that the RFMOs have the resources necessary to carry out their functions.

- RFMOs should encourage non-members with a real interest in the fishery or fisheries concerned to become members, or should at least develop ways to facilitate cooperation by non-members in the work of RFMOs.

- RFMOs should re-examine their decision-making procedures to ensure that decisions concerning IUU fishing can be made promptly and consistently.

- RFMOs should limit or deny access to the fisheries resources under their purview to fishing vessels of members that do not comply with the measures adopted by the RFMOs, including any obligations to report fisheries data.

- RFMOs should encourage their members to impose sufficient and consistent penalties on IUU fishers.

- RFMOs should serve as hubs for improved collection and dissemination of information on vessels engaged in or supporting IUU fishing. For example, RFMOs can:

  - develop lists of vessels that are believed to have engaged in IUU fishing, as well as lists of all vessels fishing in areas under their purview; and

  - develop databases of information concerning fishing violations and prosecutions.

- RFMOs should serve as fora to expand and harmonize differing VMS arrangements currently in use. Through RFMOs, States can:

  - develop common data formats, data sharing arrangements and standards for maintaining the technical integrity of VMS systems; and

  - create neutral recipients of VMS data to help preserve the confidentiality of proprietary information, while also facilitating the exchange of information necessary for effective MCS.

- RFMOs should consider schemes for boarding and inspecting fishing vessels on the high seas, as envisioned in paragraph 80.8 of the IPOA-IUU.

- Those RFMOs that have not already done so should consider the establishment of comprehensive systems for port State measures for fishing vessels.

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APPENDIX I

INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

I. INTRODUCTION

1. In the context of the Code of Conduct for Responsible Fisheries and its overall objective of sustainable fisheries, the issue of illegal, unreported and unregulated (IUU) fishing in world fisheries is of serious and increasing concern. IUU fishing undermines efforts to conserve and manage fish stocks in all capture fisheries. When confronted with IUU fishing, national and regional fisheries management organizations can fail to achieve management goals. This situation leads to the loss of both short and long-term social and economic opportunities and to negative effects on food security and environmental protection. IUU fishing can lead to the collapse of a fishery or seriously impair efforts to rebuild stocks that have already been depleted. Existing international instruments addressing IUU fishing have not been effective due to a lack of political will, priority, capacity and resources to ratify or accede to and implement them.

2. The Twenty-third Session of the FAO Committee on Fisheries (COFI) in February 1999 addressed the need to prevent, deter and eliminate IUU fishing. The Committee was concerned about information presented indicating increases in IUU fishing, including fishing vessels flying "flags of convenience". Shortly afterwards, an FAO Ministerial Meeting on Fisheries in March 1999 declared that, without prejudice to the rights and obligations of States under international law, FAO "will develop a global plan of action to deal effectively with all forms of illegal, unregulated and unreported fishing including fishing vessels flying "flags of convenience" through coordinated efforts by States, FAO, relevant regional fisheries management bodies and other relevant international agencies such as the International Maritime Organization (IMO), as provided in Article IV of the Code of Conduct. The Government of Australia, in cooperation with FAO, organized an Expert Consultation on Illegal, Unreported and Unregulated Fishing in Sydney, Australia, from 15 to 19 May 2000. Subsequently, an FAO Technical Consultation on Illegal, Unreported and Unregulated Fishing was held in Rome from 2 to 6 October 2000 and a further Technical Consultation was held in Rome from 22 to 23 February 2001. The draft International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was adopted by the Consultation on 23 February 2001 with a request that the report be submitted to the Twenty-fourth Session of COFI for consideration and eventual adoption. COFI approved the International Plan of Action, by consensus, on 2 March 2001. In doing so, the Committee urged all Members to take the necessary steps to effectively implement the International Plan of Action.

II. NATURE AND SCOPE OF IUU FISHING AND THE INTERNATIONAL PLAN OF ACTION

3. In this document:

3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).

4. The IPOA is voluntary. It has been elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries as envisaged by Article 2 (d).

5. The FAO Code of Conduct for Responsible Fisheries, in particular Articles 1.1, 1.2, 3.1, and 3.2 applies to the interpretation and application of this IPOA and its relationship with other international instruments. The IPOA is also directed as appropriate towards fishing entities as referred to in the Code of Conduct. The IPOA responds to fisheries specific issues and nothing in it prejudices the positions of States in other fora.

6. In this document:

(a) the reference to States includes regional economic integration organizations in matters within their competence;

(b) the term "regional" includes sub-regional, as appropriate;

(c) the term "regional fisheries management organization" means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish fishery conservation and management measures;

(d) the term "conservation and management measures" means measures to conserve one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law;

(e) the term "1982 UN Convention" refers to the United Nations Convention on the Law of the Sea of 10 December 1982;

(f) the term "1993 FAO Compliance Agreement" refers to the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved by the FAO Conference on 24 November 1993.

(g) the term "1995 UN Fish Stocks Agreement" refers to the Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating

to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; and

(h) the term "Code of Conduct" refers to the FAO Code of Conduct for Responsible Fisheries.

7. This document is a further commitment by all States to implement the Code of Conduct.

III. OBJECTIVE AND PRINCIPLES

8. The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.

9. The IPOA to prevent, deter and eliminate IUU fishing incorporates the following principles and strategies. Due consideration should be given to the special requirements of developing countries in accordance with Article 5 of the Code of Conduct.

9.1 Participation and coordination: To be fully effective, the IPOA should be implemented by all States either directly, in cooperation with other States, or indirectly through relevant regional fisheries management organizations or through FAO and other appropriate international organizations. An important element in successful implementation will be close and effective coordination and consultation, and the sharing of information to reduce the incidence of IUU fishing, among States and relevant regional and global organizations. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organizations, should be encouraged.

9.2 Phased implementation: Measures to prevent, deter and eliminate IUU fishing should be based on the earliest possible phased implementation of national plans of action, and regional and global action in accordance with the IPOA.

9.3 Comprehensive and integrated approach: Measures to prevent, deter and eliminate IUU fishing should address factors affecting all capture fisheries. In taking such an approach, States should embrace measures building on the primary responsibility of the flag State and using all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner. The action plan should address all economic, social and environmental impacts of IUU fishing .

9.4 Conservation: Measures to prevent, deter and eliminate IUU fishing should be consistent with the conservation and long-term sustainable use of fish stocks and the protection of the environment.

9.5 Transparency: The IPOA should be implemented in a transparent manner in accordance with Article 6.13 of the Code of Conduct.

9.6 Non-discrimination: The IPOA should be developed and applied without discrimination in form or in fact against any State or its fishing vessels.

IV. IMPLEMENTATION OF MEASURES TO PREVENT, DETER AND ELIMINATE IUU FISHING

ALL STATE RESPONSIBILITIES

International Instruments

10. States should give full effect to relevant norms of international law, in particular as reflected in the 1982 UN Convention, in order to prevent, deter and eliminate IUU fishing.

11. States are encouraged, as a matter of priority, to ratify, accept or accede to, as appropriate, the 1982 UN Convention, the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement. Those States that have not ratified, accepted or acceded to these relevant international instruments should not act in a manner inconsistent with these instruments.

12. States should implement fully and effectively all relevant international fisheries instruments which they have ratified, accepted or acceded to.

13. Nothing in the IPOA affects, or should be interpreted as affecting, the rights and obligations of States under international law. Nothing in the IPOA affects, or should be interpreted as affecting, the rights and obligations contained in the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement, for States parties to those instruments.

14. States should fully and effectively implement the Code of Conduct and its associated International Plans of Action.

15. States whose nationals fish on the high seas in fisheries not regulated by a relevant regional fisheries management organization should fully implement their obligations under Part VII of the 1982 UN Convention to take measures with respect to their nationals as may be necessary for the conservation of the living resources of the high seas.

National Legislation

Legislation

16. National legislation should address in an effective manner all aspects of IUU fishing.

17. National legislation should address, *inter alia*, evidentiary standards and admissibility including, as appropriate, the use of electronic evidence and new technologies.

State Control over Nationals

18. In the light of relevant provisions of the 1982 UN Convention, and without prejudice to the primary responsibility of the flag State on the high seas, each State should, to the greatest extent possible, take measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. All States should cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.

19. States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities.

Vessels without Nationality

20. States should take measures consistent with international law in relation to vessels without nationality on the high seas involved in IUU fishing.

Sanctions

21. States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.

Non Cooperating States

22. All possible steps should be taken, consistent with international law, to prevent, deter and eliminate the activities of non-cooperating States to a relevant regional fisheries management organization which engage in IUU fishing.

Economic Incentives

23. States should, to the extent possible in their national law, avoid conferring economic support, including subsidies, to companies, vessels or persons that are involved in IUU fishing.

Monitoring, Control and Surveillance

24. States should undertake comprehensive and effective monitoring, control and surveillance (MCS) of fishing from its commencement, through the point of landing, to final destination, including by:

24.1 developing and implementing schemes for access to waters and resources, including authorization schemes for vessels;

24.2 maintaining records of all vessels and their current owners and operators authorized to undertake fishing subject to their jurisdiction;

24.3 implementing, where appropriate, a vessel monitoring system (VMS), in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board;

24.4 implementing, where appropriate, observer programmes in accordance with relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry observers on board;

24.5 providing training and education to all persons involved in MCS operations;

24.6 planning, funding and undertaking MCS operations in a manner that will maximize their ability to prevent, deter and eliminate IUU fishing;

24.7 promoting industry knowledge and understanding of the need for, and their cooperative participation in, MCS activities to prevent, deter and eliminate IUU fishing;

24.8 promoting knowledge and understanding of MCS issues within national judicial systems;

24.9 establishing and maintaining systems for the acquisition, storage and dissemination of MCS data, taking into account applicable confidentiality requirements;

24.10 ensuring effective implementation of national and, where appropriate, internationally agreed boarding and inspection regimes consistent with international law, recognizing the rights and obligations of masters and of inspection officers, and noting that such regimes are provided for in certain international agreements, such as the 1995 UN Fish Stocks Agreement, and only apply to the parties to those agreements.

National Plans of Action

25. States should develop and implement, as soon as possible but not later than three years after the adoption of the IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets. These plans should also include, as appropriate, actions to implement initiatives adopted by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing. In doing so, States should encourage the full participation and engagement of all interested stakeholders, including industry, fishing communities and non-governmental organizations.

26. At least every four years after the adoption of their national plans of action, States should review the implementation of these plans for the purpose of identifying cost-effective strategies to increase their effectiveness and to take into account their reporting obligations to FAO under Part VI of the IPOA.

27. States should ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated.

Cooperation between States

28. States should coordinate their activities and cooperate directly, and as appropriate through relevant regional fisheries management organizations, in preventing, deterring and eliminating IUU fishing. In particular, States should:

28.1 exchange data or information, preferably in standardized format, from records of vessels authorized by them to fish, in a manner consistent with any applicable confidentiality requirements;

28.2 cooperate in effective acquisition, management and verification of all relevant data and information from fishing;

28.3 allow and enable their respective MCS practitioners or enforcement personnel to cooperate in the investigation of IUU fishing, and to this end States should collect and maintain data and information relating to such fishing;

28.4 cooperate in transferring expertise and technology;

28.5 cooperate to make policies and measures compatible;

28.6 develop cooperative mechanisms that allow, *inter alia*, rapid responses to IUU fishing; and

28.7 cooperate in monitoring, control and surveillance, including through international agreements.

29. In the light of Article VI of the 1993 FAO Compliance Agreement, flag States should make available to FAO and, as appropriate, to other States and relevant regional or international organizations, information about vessels deleted from their records or whose authorization to fish has been cancelled and to the extent possible, the reasons therefor.

30. In order to facilitate cooperation and exchange of information, each State and regional or international organization should nominate and publicize initial formal contact points.

31. Flag States should consider entering into agreements or arrangements with other States and otherwise cooperate for the enforcement of applicable laws and conservation and management measures or provisions adopted at a national, regional or global level.

Publicity

32. States should publicize widely, including through cooperation with other States, full details of IUU fishing and actions taken to eliminate it, in a manner consistent with any applicable confidentiality requirements.

Technical Capacity and Resources

33. States should endeavour to make available the technical capacity and resources which are needed to implement the IPOA. This should include, where appropriate, the establishment of special funds at the national, regional or global level. In this respect, international cooperation should play an important role.

FLAG STATE RESPONSIBILITIES

Fishing Vessel Registration

34. States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing.

35. A flag State should ensure, before it registers a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.

36. Flag States should avoid flagging vessels with a history of non-compliance except where:

36.1 the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel; or

36.2 having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing.

37. All States involved in a chartering arrangement, including flag States and other States that accept such an arrangement, should, within the limits of their respective jurisdictions, take measures to ensure that chartered vessels do not engage in IUU fishing.

38. Flag States should deter vessels from reflagging for the purposes of non-compliance with conservation and management measures or provisions adopted at a national, regional or global level. To the extent practicable, the actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.

39. States should take all practicable steps, including denial to a vessel of an authorization to fish and the entitlement to fly that State's flag, to prevent "flag hopping"; that is to say, the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions.

40. Although the functions of registration of a vessel and issuing of an authorization to fish are separate, flag States should consider conducting these functions in a manner which ensures each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information sharing between the agencies responsible for those functions.

41. A Flag State should consider making its decision to register a fishing vessel conditional upon its being prepared to provide to the vessel an authorization to fish in waters under its jurisdiction, or on the high seas, or conditional upon an authorization to fish being issued by a coastal State to the vessel when it is under the control of that flag State.

Record of Fishing Vessels

42. Each flag State should maintain a record of fishing vessels entitled to fly its flag. Each flag State's record of fishing vessels should include, for vessels authorized to fish on the high seas, all the information set out in paragraphs 1 and 2 of Article VI of the 1993 FAO Compliance Agreement, and may also include, *inter alia*:

42.1 the previous names, if any and if known;

42.2 name, address and nationality of the natural or legal person in whose name the vessel is registered;

42.3 name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;

42.4 name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;

42.5 name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and

42.6 vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.

43. Flag States may also require the inclusion of the information in paragraph 42 in their record of fishing vessels that are not authorized to fish on the high seas.

Authorization to Fish

44. States should adopt measures to ensure that no vessel be allowed to fish unless so authorized, in a manner consistent with international law for the high seas , in particular the rights and duties set out in articles 116 and 117 of the 1982 UN Convention, or in conformity with national legislation within areas of national jurisdiction.

45. A flag State should ensure that each of the vessels entitled to fly its flag fishing in waters outside its sovereignty or jurisdiction holds a valid authorization to fish issued by that flag State. Where a coastal State issues an authorization to fish to a vessel, that coastal State should ensure that no fishing in its waters occurs without an authorization to fish issued by the flag State of the vessel.

46. Vessels should have an authorization to fish and where required carry it on board. Each State's authorization should include, but need not be limited to:

46.1 the name of the vessel, and, where appropriate, the natural or legal person authorized to fish;

46.2 the areas, scope and duration of the authorization to fish; and

46.3 the species, fishing gear authorized, and where appropriate, other applicable management measures.

47. Conditions under which an authorization is issued may also include, where required:

47.1 vessel monitoring systems;

47.2 catch reporting conditions, such as:

47.2.1 time series of catch and effort statistics by vessel;

47.2.2 total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery period (nominal weight is defined as the live weight equivalent of the catch);

47.2.3 discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

47.2.4 effort statistics appropriate to each fishing method; and

47.2.5 fishing location, date and time fished and other statistics on fishing operations.

47.3 reporting and other conditions for transshipping, where transshipping is permitted;

47.4 observer coverage;

47.5 maintenance of fishing and related log books;

47.6 navigational equipment to ensure compliance with boundaries and in relation to restricted areas;

47.7 compliance with applicable international conventions and national laws and regulations in relation to maritime safety, protection of the marine environment, and conservation and management measures or provisions adopted at a national, regional or global level;

47.8 marking of its fishing vessels in accordance with internationally recognized standards, such as the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels. Vessels' fishing gear should similarly be marked in accordance with internationally recognized standards;

47.9 where appropriate, compliance with other aspects of fisheries arrangements applicable to the flag State; and

47.10 the vessel having a unique, internationally recognized identification number, wherever possible, that enables it to be identified regardless of changes in registration or name over time.

48. Flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. To this end, flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or transship fish to or from these vessels. This paragraph is without prejudice to the taking of appropriate action, as necessary, for humanitarian purposes, including the safety of crew members.

49. Flag States should ensure that, to the greatest extent possible, all of their fishing, transport and support vessels involved in transshipment at sea have a prior authorization to transship issued by the flag State, and report to the national fisheries administration or other designated institution:

49.1 the date and location of all of their transshipments of fish at sea;

49.2 the weight by species and catch area of the catch transshipped;

49.3 the name, registration, flag and other information related to the identification of the vessels involved in the transshipment; and

49.4 the port of landing of the transshipped catch.

50. Flag States should make information from catch and transshipment reports available, aggregated according to areas and species, in a full, timely and regular manner and, as appropriate, to relevant national, regional and international organizations, including FAO, taking into account applicable confidentiality requirements.

COASTAL STATE MEASURES

51. In the exercise of the sovereign rights of coastal States for exploring and exploiting, conserving and managing the living marine resources under their jurisdiction, in conformity with the 1982 UN Convention and international law, each coastal State should implement measures to prevent, deter and eliminate IUU fishing in the exclusive economic zone. Among the measures which the coastal State should consider, consistent with national legislation and international law, and to the extent practicable and appropriate, are:

51.1 effective monitoring, control and surveillance of fishing activities in the exclusive economic zone;

51.2 cooperation and exchange of information with other States, where appropriate, including neighbouring coastal States and with regional fisheries management organizations;

51.3 to ensure that no vessel undertakes fishing activities within its waters without a valid authorization to fish issued by that coastal State;

51.4 to ensure that an authorization to fish is issued only if the vessel concerned is entered on a record of vessels;

51.5 to ensure that each vessel fishing in its waters maintains a logbook recording its fishing activities where appropriate;

51.6 to ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorized by that coastal State, or conducted in conformity with appropriate management regulations;

51.7 regulation of fishing access to its waters in a manner which will help to prevent, deter and eliminate IUU fishing; and

51.8 avoiding licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing, taking into account the provisions of paragraph 36.

PORT STATE MEASURES

52. States should use measures, in accordance with international law, for port State control of fishing vessels in order to prevent, deter and eliminate IUU fishing. Such measures should be implemented in a fair, transparent and non-discriminatory manner.

53. When used in paragraphs 52 to 64, port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of, *inter alia*, refuelling, re-supplying, transshipping and landing, without prejudice to the sovereignty of a coastal State in accordance with its national law and article 25.2 of the 1982 UN Convention and other relevant international law.

54. Notwithstanding paragraphs 52, 53 and 55; a vessel should be provided port access, in accordance with international law, for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

55. Prior to allowing a vessel port access, States should require fishing vessels and vessels involved in fishing related activities seeking permission to enter their ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of

fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing.

56. Where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.

57. States should publicize ports to which foreign flagged vessels may be permitted admission and should ensure that these ports have the capacity to conduct inspections.

58. In the exercise of their right to inspect fishing vessels, port States should collect the following information and remit it to the flag State and, where appropriate, the relevant regional fisheries management organization:

58.1 the flag State of the vessel and identification details;

58.2 name, nationality, and qualifications of the master and the fishing master;

58.3 fishing gear;

58.4 catch on board, including origin, species, form, and quantity;

58.5 where appropriate, other information required by relevant regional fisheries management organizations or other international agreements; and

58.6 total landed and transshipped catch.

59. If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.

60. In applying paragraphs 58 and 59, States should safeguard the confidentiality of information collected, in accordance with their national laws.

61. States should establish and publicize a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and

general operating guidelines for port State control officers. States should also consider capacity-building needs in the development and implementation of this strategy.

62. States should cooperate, as appropriate, bilaterally, multilaterally and within relevant regional fisheries management organizations, to develop compatible measures for port State control of fishing vessels. Such measures should deal with the information to be collected by port States, procedures for information collection, and measures for dealing with suspected infringements by the vessel of measures adopted under these national, regional or international systems.

63. States should consider developing within relevant regional fisheries management organizations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that regional fisheries management organization, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures. The identification of the vessels by the regional fisheries management organization should be made through agreed procedures in a fair, transparent and non-discriminatory manner.

64. States should enhance cooperation, including by the flow of relevant information, among and between relevant regional fisheries management organizations and States on port State controls.

INTERNATIONALLY AGREED MARKET–RELATED MEASURES

65. The measures in paragraphs 66 to 76 are to be implemented in a manner which recognizes the right of States to trade in fish and fishery products harvested in a sustainable manner and should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organisation, and implemented in a fair, transparent and non-discriminatory manner.

66. States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories. The identification of the vessels by the regional fisheries management organization should be made through agreed procedures in a fair, transparent and non-discriminatory manner. Trade-related measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in WTO Agreements, and

implemented in a fair, transparent and non-discriminatory manner. Trade-related measures should only be used in exceptional circumstances, where other measures have proven unsuccessful to prevent, deter and eliminate IUU fishing, and only after prior consultation with interested States. Unilateral trade-related measures should be avoided.

67. States should ensure that measures on international trade in fish and fishery products are transparent, based on scientific evidence, where applicable, and are in accordance with internationally agreed rules.

68. States should cooperate, including through relevant global and regional fisheries management organizations, to adopt appropriate multilaterally agreed trade-related measures, consistent with the WTO, that may be necessary to prevent, deter and eliminate IUU fishing for specific fish stocks or species. Multilateral trade-related measures envisaged in regional fisheries management organizations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.

69. Trade-related measures to reduce or eliminate trade in fish and fish products derived from IUU fishing could include the adoption of multilateral catch documentation and certification requirements, as well as other appropriate multilaterally-agreed measures such as import and export controls or prohibitions. Such measures should be adopted in a fair, transparent and non-discriminatory manner. When such measures are adopted, States should support their consistent and effective implementation.

70. Stock or species-specific trade-related measures may be necessary to reduce or eliminate the economic incentive for vessels to engage in IUU fishing.

71. States should take steps to improve the transparency of their markets to allow the traceability of fish or fish products.

72. States, when requested by an interested State, should assist any State in deterring trade in fish and fish products illegally harvested in its jurisdiction. Assistance should be given in accordance with terms agreed by both States and fully respecting the jurisdiction of the State requesting assistance.

73. States should take measures to ensure that their importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public are aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing, whether by the State under whose jurisdiction the vessel is operating or by the relevant regional fisheries management organizations in accordance with its agreed procedures,

and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. All identifications of vessels engaged in IUU fishing should be made in a fair, transparent and non-discriminatory manner.

74. States should take measures to ensure that their fishers are aware of the detrimental effects of doing business with importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers and other services suppliers identified as doing business with vessels identified as engaged in IUU fishing, whether by the State under whose jurisdiction the vessel is operating or by the relevant regional fisheries management organization in accordance with its agreed procedures, and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. All identifications of vessels engaged in IUU fishing should be made in a fair, transparent and non-discriminatory manner.

75. States should work towards using the Harmonized Commodity Description and Coding System for fish and fisheries products in order to help promote the implementation of the IPOA.

76. Certification and documentation requirements should be standardized to the extent feasible, and electronic schemes developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid unnecessary burdens on trade.

RESEARCH

77. States should encourage scientific research on methods of identifying fish species from samples of processed products. FAO should facilitate the establishment of a network of databases of genetic and other markers used to identify fish species from processed product, including the ability to identify the stock of origin where possible.

REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS

78. States should ensure compliance with and enforcement of policies and measures having a bearing on IUU fishing which are adopted by any relevant regional fisheries management organization and by which they are bound. States should cooperate in the establishment of such organizations in regions where none currently exist.

79. As the cooperation of all relevant States is important for the success of measures taken by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing, States which are not members of a relevant regional fisheries management organization are not discharged from

their obligation to cooperate, in accordance with their international obligations, with that regional fisheries management organization. To that end, States should give effect to their duty to cooperate by agreeing to apply the conservation and management measures established by that regional fisheries management organization, or by adopting measures consistent with those conservation and management measures, and should ensure that vessels entitled to fly their flag do not undermine such measures.

80. States, acting through relevant regional fisheries management organizations, should take action to strengthen and develop innovative ways, in conformity with international law, to prevent, deter and eliminate IUU fishing. Consideration should be given to including the following measures:

80.1 institutional strengthening, as appropriate, of relevant regional fisheries management organizations with a view to enhancing their capacity to prevent, deter and eliminate IUU fishing;

80.2 development of compliance measures in conformity with international law;

80.3 development and implementation of comprehensive arrangements for mandatory reporting;

80.4 establishment of and cooperation in the exchange of information on vessels engaged in or supporting IUU fishing;

80.5 development and maintenance of records of vessels fishing in the area of competence of a relevant regional fisheries management organization, including both those authorized to fish and those engaged in or supporting IUU fishing;

80.6 development of methods of compiling and using trade information to monitor IUU fishing;

80.7 development of MCS, including promoting for implementation by its members in their respective jurisdictions, unless otherwise provided for in an international agreement, real time catch and vessel monitoring systems, other new technologies, monitoring of landings, port control, and inspections and regulation of transshipment, as appropriate;

80.8 development within a regional fisheries management organization, where appropriate, of boarding and inspection regimes consistent with international law, recognizing the rights and obligations of masters and inspection officers;

80.9 development of observer programmes;

80.10 where appropriate, market-related measures in accordance with the IPOA;

80.11 definition of circumstances in which vessels will be presumed to have engaged in or to have supported IUU fishing;

80.12 development of education and public awareness programmes;

80.13 development of action plans; and

80.14 where agreed by their members, examination of chartering arrangements, if there is concern that these may result in IUU fishing.

81. States, acting through relevant regional fisheries management organizations, should compile and make available on a timely basis, and at least on an annual basis, to other regional fisheries management organizations and to FAO, information relevant to the prevention, deterrence and elimination of IUU fishing, including:

81.1 estimates of the extent, magnitude and character of IUU activities in the area of competence of the regional fisheries management organization;

81.2 details of measures taken to deter, prevent and eliminate IUU fishing;

81.3 records of vessels authorized to fish, as appropriate; and

81.4 records of vessels engaged in IUU fishing.

82. Objectives of institutional and policy strengthening in relevant regional fisheries management organizations in relation to IUU fishing should include enabling regional fisheries management organizations to:

82.1 determine policy objectives regarding IUU fishing, both for internal purposes and co-ordination with other regional fisheries management organizations;

82.2 strengthen institutional mechanisms as appropriate, including mandate, functions, finance, decision making, reporting or information requirements and enforcement schemes, for the optimum implementation of policies in relation to IUU fishing;

82.3 regularize coordination with institutional mechanisms of other regional fisheries management organizations as far as possible in relation to IUU fishing, in particular information, enforcement and trade aspects; and

82.4 ensure timely and effective implementation of policies and measures internally, and in cooperation with other regional fisheries management organizations and relevant regional and international organizations.

83. States, acting through relevant regional fisheries management organizations, should encourage non-contracting parties with a real interest in the fishery concerned to join those organizations and to participate fully in their work. Where this is not possible, the regional fisheries management organizations should encourage and facilitate the participation and cooperation of non-contracting parties, in accordance with applicable international agreements and international law, in the conservation and management of the relevant fisheries resources and in the implementation of measures adopted by the relevant organizations. Regional fisheries management organizations should address the issue of access to the resource in order to foster cooperation and enhance sustainability in the fishery, in accordance with international law. States, acting through relevant regional fisheries management organizations, should also assist, as necessary, non-contracting parties in the implementation of paragraphs 78 and 79 of the IPOA.

84. When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant regional fisheries management organization, the member States, acting through the organization, should draw the problem to the attention of that State. If the problem is not rectified, members of the organization may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.

V. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

85. States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, should cooperate to support training and capacity building and consider providing financial, technical and other assistance to developing countries, including in particular the least developed among them and small island developing States, so that they can more fully meet their commitments under the IPOA and obligations under international law, including their duties as flag States and port States. Such assistance should be directed in particular to help such States in the development and implementation of national plans of action in accordance with paragraph 25.

86. States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, should cooperate to enable:

86.1 review and revision of national legislation and regional regulatory frameworks;

86.2 the improvement and harmonization of fisheries and related data collection;

86.3 the strengthening of regional institutions; and

86.4 the strengthening and enhancement of integrated MCS systems, including satellite monitoring systems.

VI. REPORTING

87. States and regional fisheries management organizations should report to FAO on progress with the elaboration and implementation of their plans to prevent, deter and eliminate IUU fishing as part of their biennial reporting to FAO on the Code of Conduct. These reports should be published by FAO in a timely manner.

VII. ROLE OF FAO

88. FAO will, as and to the extent directed by its Conference, collect all relevant information and data that might serve as a basis for further analysis aimed at identifying factors and causes contributing to IUU fishing such as, *inter alia*, a lack of input and output management controls, unsustainable fishery management methods and subsidies that contribute to IUU fishing.

89. FAO will, as and to the extent directed by its Conference, support development and implementation of national and regional plans to prevent, deter and eliminate IUU fishing through specific, in-country technical assistance projects with Regular Programme funds and through the use of extra-budgetary funds made available to the Organization for this purpose.

90. FAO should, in collaboration with other relevant international organizations, in particular IMO, further investigate the issue of IUU fishing.

91. FAO should convene an Expert Consultation on the implementation of paragraph 76 of the IPOA.

92. FAO should investigate the benefits of establishing and maintaining regional and global databases, including but not limited to, information as provided for in Article VI of the 1993 FAO Compliance Agreement.

93. The FAO Committee on Fisheries will, based on a detailed analysis by the Secretariat, biennially evaluate the progress towards the implementation of the IPOA.

APPENDIX II

TECHNICAL TERMS OF REFERENCE OF THE INTERNATIONAL NETWORK FOR THE COOPERATION AND COORDINATION OF FISHERIES-RELATED MONITORING, CONTROL AND SURVEILLANCE ACTIVITIES

PREAMBLE

Recognizing:

The responsibilities of States to manage fisheries in which their nationals are engaged and/or benefit;

The interest of States in providing for the long term development of sustainable marine resources;

The range and extent of fishing activities within and across coastal waters and the high seas;

The impacts of fishing on non-target species and the wider marine environment;

The costs of ensuring compliance by foreign and domestic vessels with fisheries management and conservation measures;

The benefits of coordination and cooperation in fisheries-related monitoring, control and surveillance (MCS);

The advantages of collecting and sharing MCS information, and

The requirements of States to implement fisheries-related MCS measures pursuant to national, regional and international law, including:

Article 8.1.4 and other provisions related to MCS from the Code of Conduct for Responsible Fisheries,

Item 12J of the Declaration of Rome on the Application of Code of Conduct adopted during the FAO ministerial meeting on fisheries held 10 and 11 March 1999,

Articles V, VI, and VII of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Annex I, Standard Requirements for the Collection and Sharing of Data of the Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and

Article 24 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unregulated and Unreported Fishing.

The country participants in the International Conference on Monitoring, Control and Fishing Surveillance (Santiago, Chile, 25 and 26 January 2000) indicate their intention to create an international network for the coordination of fisheries-related enforcement.

1. DEFINITION

The International MCS Network is an arrangement of national organizations/institutions in charge of fisheries-related MCS activities, which have been authorized by their countries, to coordinate and cooperate in order to prevent, deter and eliminate Illegal, Unreported and Unregulated (IUU) fishing.

2. OBJECTIVES AND FUNCTIONS

2.1 The objectives of the International MCS Network are to improve the efficiency and effectiveness of fisheries-related MCS activities through enhanced cooperation, coordination, information collection and exchange among national organizations/institutions responsible for fisheries-related MCS.

2.2 States shall achieve these objectives through the following functions:

a) identifying their national organizations/institutions responsible for fisheries-related MCS, and the primary contact person who shall act as the main national coordinator for the purposes of this network;

b) collecting and providing timely and accurate MCS information to other parties to the arrangement;

c) considering requests and, where appropriate and possible, cooperating in joint fisheries-related MCS activities;

d) promoting technical assistance, training, experience exchange, and institutional development, to increase MCS knowledge and capability amongst participating parties;

e) considering the particular needs and obstacles faced by developing countries; and

f) identifying and designating an International MCS Network Administrator.

3. ORGANIZATION

3.1 Participation in the International MCS Network will be voluntary. Organizations/Institutions responsible for MCS will be able to participate by notifying the International MCS Network Administrator through the use of a written format that will be available on the International MCS Network Website.

3.2 The organizations/institutions responsible for MCS may participate and contribute within the limits of their current resources, and are encouraged to participate further as resources are available.

3.3 In order to access the websites of each participating organization/institution responsible for MCS, the International MCS Network Website Administrator will maintain a hyperlink on the International MCS Network Website that allows access to the points of contact and to the web-available information identified in "INFORMATION REQUIREMENTS". The Network Administrator will assign passwords and manage access to the website.

4. PROTOCOL FOR INFORMATION EXCHANGE

4.1 Organizations/institutions should cooperate in the collection, exchange and transmission of information within the constraints of laws and conventions of each State relating to the confidentiality and protection of private, restricted and privileged information.

4.2 To the greatest extent practicable, the information identified in "INFORMATION REQUIREMENTS" should be made available through access to the International MCS Network.

4.3 For information that cannot be accessed through the International MCS Network Website, requests should be made of the contact person(s) or designated person(s) identified on the International MCS Network Website. The contact person or designees should ensure that inquiries are responded to promptly.

4.4 Subject to the operation of freedom of information and privacy laws applicable to each participant, information which can be supplied in response to requests shall be treated as being supplied in confidence and held in a secure manner unless otherwise permitted by the participant providing the information.

5. INFORMATION REQUIREMENTS

5.1 Consistent with their national legislation, the following information should be collected and maintained by each organization/institution in order to facilitate MCS coordination and cooperation. This should include at a minimum, that information required under the FAO Compliance Agreement and, to the extent possible, as proposed under the International Plan of Action to combat IUU fishing.

5.2 The exchange of information shall be carried out according to the protocol described in "PROTOCOL FOR INFORMATION EXCHANGE

5(a) Organizational/Institutional Contact Information

- Primary Contact officer (name, telephone numbers, fax, e-mail, language).
- Name and positions of key personnel (address, telephone numbers, fax, e-mail, website)
- Name of relevant fisheries MCS organizations/institutions, (general description of organization and structure)

5(b) Vessel Related Information

- Name of vessel
- Registration number (IMO number, if available)

- Flag of vessel
- Previous flag state and date of change
- Previous names of vessel and date of change
- Register and port of registration
- International radio call sign
- Name and address of owners (telephone numbers, fax, e-mail, website)
- Name and address of previous owners
- Name and address of shipbuilder (telephone numbers, fax, e-mail, website)
- Fishing system at time of construction (type of vessel)
- Currently installed fishing systems
- Where and date built
- Length (m)
- Base port of operations
- Color photograph
- Vessel positioning system (type)
- Maximum beam (m)
- Pillar (m)
- Moulded depth (m)
- Hold capacity (m3)
- Gross register ton (GRT) (gross tonnage)
- Net register ton (NRT) (net tonnage)
- Displacement (tons)
- Rated power main engine (hp)
- Rated power auxiliary engines (hp)

5(c) Fishing Permits/Authorizations

- Name of the vessel
- Natural or legal person authorized to fish
- Areas, scope and duration of the authorization
- Scientific name of species or FAO Code, fishing gear authorized, and where appropriate, other applicable management measures
- Vessel monitoring systems
- Catch reporting requirements
- Reporting and other conditions for transshipping
- Observer coverage, maintenance of fishing and related log books
- Navigational equipment
- Compliance with applicable international conventions and national laws and regulations
- Marking of fishing vessels
- Compliance with other aspects of fisheries arrangements

- Internationally recognized registration number

5(d) Catch/Landing Information

- Name of Vessel
- Vessel logbook data
- Landing data, where relevant
- Sale and/or export data

5(e) MCS Information

- Name of Vessel
- Vessel inspection information
- Record of sightings and movements
- Action/contact officers
- Violation history and penalty information (vessel, companies, persons) in accordance with national laws

5(f) Fisheries Laws

- Legislation/regulations and policies relating to particular fisheries and conservation measures.

6. INTERNATIONAL MCS NETWORK COSTS

6.1 Participants providing information, cooperation or assistance, or participating in joint exercises, shall bear the costs of providing that service unless there is a prior written agreement otherwise.

6.2 The costs related to administration/operation of the International MCS Network will be borne by whomever administers the network.

APPENDIX III

SCHEME TO PROMOTE COMPLIANCE BY NON-CONTRACTING PARTY VESSELS WITH THE CONSERVATION AND ENFORCEMENT MEASURES ESTABLISHED BY NAFO[140]

In implementing this Scheme, the Contracting Parties acknowledge the rights, duties and obligations of States whose vessels fish on the high seas as expressed in the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, the 1982 United Nations Convention on the Law of the Sea, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and general principles of international law, particularly the duty to have due regard to established fisheries.

1. The purpose of the Scheme is to ensure the effectiveness of the Conservation and Enforcement Measures established by the organization.

2. The term "fishing activities" means fishing, fish processing operations, the transshipment of fish or fish products, and any other activity in preparation for or related to fishing in the NAFO Regulatory Area. The term "NAFO inspector" means an inspector of the fishery control services of the Contracting Parties assigned to the NAFO Scheme of Joint International Inspection and Surveillance.

3. Upon adoption of the Scheme, the NAFO Secretariat will give due publicity to the Scheme and to the NAFO Conservation and Enforcement Measures.

4. The measures contained in the Scheme are directed at Non-Contracting Party vessels engaged in fishing activities in the NAFO Regulatory Area.

5. A Non-Contracting Party vessel which has been sighted engaging in fishing activities in the NAFO Regulatory Area is presumed to be undermining the effectiveness of NAFO Conservation and Enforcement Measures. In the case of any transshipment activities involving a sighted Non-Contracting Party vessel, inside or outside the NAFO Regulatory Area, the presumption of undermining NAFO Conservation and Enforcement Measures applies to any other Non-Contracting Party vessel which has engaged in such activities with that vessel.

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[140] NAFO/GC Doc. 97/6, adopted September 1977.

6. Information regarding such sightings shall be transmitted to the NAFO Secretariat. The NAFO Secretariat will then transmit this information to all NAFO Contracting Parties within one business day of receiving this information, and to the flag-State of the sighted vessel as soon as possible.

7. The NAFO Contracting Party which sighted the Non-Contracting Party vessel will attempt to inform such a vessel that it has been sighted engaging in fishing activities and is accordingly presumed to be undermining the NAFO Conservation and Enforcement Measures, and that this information will be distributed to all NAFO Contracting Parties and to the flag-State of the vessel.

8. In the event that any Non-Contracting Party vessel, which has been sighted and reported as engaged in fishing activities in the NAFO Regulatory Area, consents to be boarded by NAFO inspectors, the findings of the NAFO inspectors shall be transmitted to the NAFO Secretariat. The NAFO Secretariat will transmit this information to all NAFO Contracting Parties within one business day of receiving this information, and to the flag-State of the boarded vessel as soon as possible. The Non-Contracting Party vessel which is boarded shall be provided with a copy of the findings of the NAFO inspectors.

9. When a Non-Contracting Party vessel referred to in paragraph 5 enters a port of any NAFO Contracting Party, it shall be inspected by authorized Contracting Party officials knowledgeable in the NAFO Conservation and Enforcement Measures and this Scheme, and shall not land or transship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, log books, fishing gear, catch on board and any other matter relating to the vessel's activities in the NAFO Regulatory Area.

10. Landings and transshipments of all fish from a Non-Contracting Party vessel, which has been inspected pursuant to paragraph 9, shall be prohibited in all Contracting Party ports, if such inspection reveals that the vessel has onboard:

(i) species listed in Annex A, unless the vessel establishes that the fish were caught outside the NAFO Regulatory Area; or

(ii) other species listed in Annex B, unless the vessel establishes that it has applied the NAFO Conservation and Enforcement Measures.

11. Contracting Parties shall ensure that their vessels do not receive transshipments of fish from a Non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the NAFO Regulatory Area.

12. Information on the results of all inspections of Non-Contracting Party vessels conducted in the ports of Contracting Parties, and any subsequent action, shall be transmitted immediately through the NAFO Secretariat to all Contracting Parties and as soon as possible to the relevant flag-State(s).

13. Each Contracting Party shall report to the Executive Secretary by 1 March each year for the previous calendar year:

(i) the number of inspections of Non-Contracting Party vessels it conducted under the Scheme in its ports, the names of the vessels inspected and their respective flag-State, the dates and ports where the inspection was conducted, and the results of such inspections; and

(ii) where fish are landed or transshipped following an inspection pursuant to the Scheme, the report shall also include the evidence presented pursuant to paragraph 10 (i) and (ii).

14. The Executive Secretary shall prepare a report by 1 April each year, for the previous calendar year, based on the periodic reports made by Contracting Parties as called for in this Scheme.

15. Nothing in this Scheme affects the exercise by NAFO Contracting Parties of their sovereignty over the ports in their territory in accordance with international law.

16. The Standing Committee on Fishing Activities of Non-Contracting Parties in the NAFO Regulatory Area (STACFAC) shall review annually the information compiled, actions taken under this scheme and the operation of the Scheme, and where necessary, recommend to the General Council new measures to enhance the observance of NAFO Conservation and Enforcement Measures by Non-Contracting Parties and new procedures to enhance the implementation of the Scheme by Contracting Parties.

Annex A

Common English Name Scientific Name
1. Atlantic cod (*Gadus morhua*)
2. Atlantic redfish (*Sebastes* sp.)
3. American plaice (*Hippoglossoides platessoides*)
4. Yellowtail flounder (*Limanda ferruginea*)
5. Witch flounder (*Glyptocephalus cynoglossus*)
6. Capelin (*Mallotus villosus*)
7. Greenland halibut (*Reinhardtius hippoglossoides*)
8. Short-finned squid (*Illex*) (*Illex illecebrosus*)
9. Shrimps (*Pandalus* sp.)

Annex B

Common English Name Scientific Name
1. Haddock (*Melanogrammus aeglefinus*)
2. Silver hake (*Merluccius bilinearis*)
3. Red hake (*Urophycis chuss*)
4. Pollock (*Pollachius virens*)
5. Roundnose grenadier (*Macrourus rupestris*)
6. Atlantic herring (*Clupea harengus*)
7. Atlantic mackerel (*Scomber scombrus*)
8. Atlantic butterfish (*Peprilus triacanthus*)
9. River herring (alewife) (*Alosa pseudoharengus*)
10. Atlantic argentine (*Argentina silus*)
11. Long-finned squid (*Loligo*) (*Loligo pealei*)
12. Wolffishes (NS) (*Anarhichas* sp.)
13. Skates (NS) (*Raja* sp.)

APPENDIX IV

REVISED ICCAT PORT INSPECTION SCHEME

Recommendation by ICCAT for a Revised ICCAT Port Inspection Scheme[141]

RECOGNIZING that many parties currently have port inspection schemes in place;

THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:

1. Inspection shall be carried out by the appropriate authorities of the Contracting Parties, who will monitor compliance with the Commission's conservation measures for all ICCAT species, at their own ports, without discrimination. Inspectors shall produce identification as provided by the national government.

2. In the case of an apparent violation by a foreign fishing vessel, the inspector shall draw up a report of the inspection on a form standardized by the Commission, or on a form produced by the national government which collects the same quality of information. The inspector must sign the report in the presence of the master of the vessel, who shall be entitled to add or have added to the report any observations, and to add his own signature. The inspector should note in the vessel's logbook that an inspection was made. Copies of the form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. In the case of a violation by a domestic vessel, domestic procedures will be followed for documentation, which must also provide the same quality of information as the standard ICCAT form.

3. An inspector may examine the fish, fishing gear, fish samples, and all relevant documents, including fishing logbooks and cargo manifest (in the case of a mother ship or carrier vessel), to verify compliance with ICCAT measures. The master of the vessel is required to cooperate with the inspector. Inspections shall be carried out so that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.

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[141] ICCAT Recommendation 97-10, entered into force on 13 June 1998.

4. Parties shall consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of national inspectors in accordance with their national legislation. Contracting Parties shall collaborate, in accordance with their legislation, in order to facilitate judicial or other proceedings arising from reports of inspectors acting under these arrangements.

5. For cases in which an apparent violation has occurred, the vessel's flag state shall notify ICCAT of actions taken to address the violation.

6. All parties shall inform their vessel masters who are fishing on ICCAT species of the regulations. The masters shall also be instructed to cooperate with the inspectors in national as well as foreign ports.

7. Parties whose vessels enter, land, or tranship their catches in ports other than their own, can send their own inspectors to inspect their own vessels with respect to the observance of the Commission's regulations, having previously obtained an invitation from the port state in which the inspection shall be executed.

   In addition, parties are encouraged to enter into bilateral agreements/ arrangements that allow for an inspector exchange program designed to promote cooperation, share information, and educate each party's inspectors on strategies and operations that promote compliance with ICCAT's management measures. The countries' national report should include a description of such programs.

NB: The Commission agreed that most ICCAT recommendations could only be enforced during off-loading, and therefore this is the most fundamental and effective tool for monitoring and inspection. This recommendation would modify the existing ICCAT port inspection scheme to require national port inspection schemes and to provide minimum standards in conducting port inspection of foreign and domestic vessels during off-loading and transhipment operations of all ICCAT species. The purpose of the port inspection scheme is to ensure individual vessel compliance as well as to facilitate overall monitoring of each party's fisheries for ICCAT species. ICCAT hopes that the parties will actually exceed these minimum standards in order to effect timely and accurate monitoring of landings and transshipments, check compliance with ICCAT management measures, ensure quotas are not exceeded, and collect data and other information on landings and transshipments.

APPENDIX V

CCAMLR CATCH DOCUMENTATION SCHEME FOR *DISSOSTICHUS* spp.[142]

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

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[142] CCAMLR Conservation Measure 170/XX. Annexes to this measure, as well as other related CCAMLR documents, are available on the CCAMLR website.

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus* spp.,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it la nds or transhipsis *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transshipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. Each Contracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with

the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) the name, address, telephone and fax numbers of the issuing authority;

(ii) the name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) the reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) the weight of each *Dissostichus* species landed or transhipped by product type, and

(a) by CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) by FAO statistical area, subarea or division if caught outside the Convention Area;

(v) the dates within which the catch was taken;

(vi) the date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) the name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 170/A to this measure. The standard catch document is attached to the annex.

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

   (i) includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 170/A to this measure; and

   (ii) includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch document s by Flag States by using, *inter alia*, VMS, in

respect of catches[1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

APPENDIX VI

WEBSITES OF SELECTED RFMOS

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR):	www.ccamlr.org
Commission for the Conservation of Southern Bluefin Tuna (CCSBT):	www.home.aone.net.au/ccsbt/
General Fisheries Commission for the Mediterranean (GFCM):	www.fao.org/fi
Indian Ocean Tuna Commission (IOTC):	www.seychelles.net/iotc
International Baltic Sea Fishery Commission (IBSFC):	www.ibsfc.org
International Commission for the Conservation of Atlantic Tunas (ICCAT):	www.iccat.es
Inter-American Tropical Tuna Commission (IATTC):	www.iattc.org
Northeast Atlantic Fisheries Commission (NEAFC):	www.neafc.org
Northwest Atlantic Fisheries Organization (NAFO):	www.nafo.ca
North Atlantic Salmon Organization (NASCO):	www.nasco.int
North Pacific Anadromous Fish Commission (NPAFC):	www.npafc.org

These guidelines have been produced to support implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). They are addressed to decision-makers and policy-makers associated with the management of fisheries, but they should also be of interest to fishing industries and other parties. The IPOA-IUU is consistent with the FAO Code of Conduct for Responsible Fisheries, as well as with the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the 1995 Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and other applicable rules of international law. The guidelines are intended to provide general advice and a framework for development and implementation of national plans of action.

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